

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of  
  
Kentucky Cable  
Telecommunications  
Association,  
P.O. Box 415  
Burkesville, KY 42717,  
Complainant,

v.

Jackson Purchase Energy Corporation,  
2900 Irvin Cobb Drive  
Paducah, KY 42002-4030,  
Respondent.

RECEIVED

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PUBLIC SERVICE  
COMMISSION

No. 2003-00056

COMPLAINT

The Kentucky Cable Telecommunications Association ("KCTA"), pursuant to 807 K.A.R. § 5:001.12, submits this Complaint on behalf of members Charter Communications ("Charter"), Comcast Cablevision of Paducah, Inc. ("Comcast"), and Mediacom Communications Corporation ("Mediacom") (the "Cable Companies"). <sup>1/</sup> KCTA requests that the Commission find Jackson Purchase Energy Corporation ("JPEC") in violation of its tariff for unilaterally expanding the tariff's definition of "pole attachment," and retroactively imposing unauthorized attachment penalties going back 13 years on that basis. The Commission has jurisdiction over this matter under KY. REV. STAT. ANN. §§ 278.040, 278.160. See *Electric & Water Plant Bd. v. South Central Bell*

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<sup>1/</sup> KCTA is a non-profit organization consisting of 117 member cable systems serving approximately 90 percent of cable subscribers across Kentucky. KCTA provides educational information to its member systems and promotes public education regarding the cable telecommunications industry.

*Telephone Co.*, 805 S.W.2d 141, 144 (Ky. Ct. App. 1991); *Kentucky CATV Association v. Volz*, 675 S.W.2d 393, 396 (Ky. Ct. App. 1983).

## INTRODUCTION AND SUMMARY

KCTA brings this matter before the Commission in response to JPEC's unilateral redefinition of what constitutes a "pole attachment" under its tariff. JPEC's new definition stands in stark contrast to the definition that has been adopted by this Commission – and every other state and federal jurisdiction that regulates pole attachments – and has been used by all utilities in Kentucky for almost 20 years. Based on its new definition, moreover, JPEC has levied exorbitant penalties in violation of its tariff and Commission order. JPEC has threatened to sue the Cable Companies by February 15, 2003, if they do not accede to its demands.

This Complaint raises two straightforward questions: (i) Whether JPEC is prohibited from unilaterally revising its tariff to greatly expand the definition of "pole attachment" without first obtaining Commission approval through formal tariff proceedings, and (ii) whether its tariff and PSC requirements prevent JPEC from imposing penalties for "unauthorized attachments" for 13 years of attachments JPEC itself treated as authorized. Clear statutory language, the PSC's rules and policies, and fundamental fairness all hold in the affirmative.

For nearly two decades utility pole owners and cable operators in Kentucky have operated with minimal conflict under the dictates of the Commission's generic pole attachment order issued in 1982. *Adoption of a Standard Methodology for Establishing Rates for Cable Television Pole*

*Attachments*, Order, Case No. 251, 49 P.U.R.4th 128 (Ky. PSC Sept. 17, 1982) ("*CATV Pole Attachment Order*"). The CATV Pole Attachment Order was the result of weeks of hearings involving all of the major utility companies in Kentucky, including representatives of cooperative utilities, as well as KCTA. Following the hearing, JEPC, like other utilities, issued a tariff that controlled the terms and conditions of cable pole attachments. That tariff has not been revised since 1987. Until 2002, JEPC billed the Cable Companies, and their predecessors-in-interest, under the tariff without dispute. In late 2001 or early 2002, however, JEPC appointed a new Vice President of Engineering – Richard T. Sherrill. Under its new leadership, JEPC determined that the historic definition of what constitutes a pole attachment, based on the PSC's CATV Pole Attachment Order and mutually accepted by JEPC and the Cable Companies for two decades, should be revised. JEPC then conducted a pole attachment "audit" based on JEPC's new definition and determined that the Cable Companies had hundreds more "pole attachments" than JEPC had been billing the Cable Companies for.

JEPC's redefinition of "pole attachment" constitutes a new rate under KY. REV. STAT. ANN. § 278.010(12) and requires approval by the Commission in a formal tariff proceeding. *Id.* § 278.160 and 807 K.A.R. 5:011. JEPC has not obtained such approval from the Commission, nor has it attempted to do so. In addition, JEPC is plainly overreaching in demanding unauthorized attachment penalties dating back 13 years. The *CATV Pole Attachment Order* and JEPC's tariff both limit unauthorized attachment penalties to two times the standard rate from the day after the last "previously required inspection." *CATV Pole*

*Attachment Order*, 49 P.U.R.4th at 130, 135; JPEC Tariff at Sheet No. 10.5.

JPEC has an obligation to conduct such an inspection every two years. See 807 K.A.R. 5:006, § 25; *CATV Pole Attachment Order*, 49 P.U.R.4th at 130 (citing to 807 K.A.R. 5:006, § 22 (now 807 K.A.R. 5:006, § 25)). JPEC cannot make its failure to conduct these required inspections the basis for penalties imposed on KCTA's members for pole attachments.

### BACKGROUND

1. Complainant KCTA routinely represents the interests of its members, such as the Cable Companies here, in pole attachment matters before this Commission. KCTA's post office address is P.O. Box 415, Burkesville, KY 42717.

2. JPEC is an electric cooperative and retail electric supplier, and as such maintains the poles and other facilities to which KCTA's members must attach to operate their cable television systems. <sup>2/</sup> JPEC's post office address is 2900 Irvin Cobb Drive, Paducah, KY 42002-4030.

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<sup>2/</sup> Numerous courts have recognized that cable operators have no realistic economic choice except to attach to utilities' existing poles. See e.g., *FCC v. Florida Power Corp.*, 480 U.S. 245, 247 (1987) (utility poles are "virtually the only practical physical medium for the installation of television cables"); *Southern Co. v. FCC*, 293 F.3d 1338, 1341-42 (11<sup>th</sup> Cir. 2002) ("From the inception of the cable television industry, cable television companies have attached their distribution cables to utility poles owned and maintained by power and telephone companies. As a practical matter, cable companies have had little choice but to do so. The start up costs of constructing an entirely new set of poles and other distribution facilities for cable television cables are prohibitive, and when coupled with the difficulties of obtaining regulatory approval for a distinct set of utility poles, the barriers to such construction are insurmountable. Therefore, cable companies have long rented space from utilities on their extant poles and conduits. Ownership of the only facilities available gave the utilities a superior bargaining position when renting space to cable providers, and the Pole Attachment Act (passed in 1978) reflects Congress's decision to regulate this relationship."); *UCA, LLC v.*

3. Since the adoption of the *CATV Pole Attachment Order* in 1982, the Cable Companies and their predecessors-in-interest have taken service from JPEC for "pole attachments" pursuant to JPEC's tariff. <sup>3/</sup> JPEC's first tariff incorporating its pole attachment obligations under the *CATV Pole Attachment Order* went into effect May 20, 1983. The last approved revision to the pole attachment provisions of JPEC's tariff were issued April 9, 1987. JPEC Tariff at Sheet No. 10.0.

4. The tariff requires the Cable Companies to pay annual yearly rental charges of \$2.27 for all pole attachments on two-party poles, and \$1.75 for all pole attachments on three party poles. *Id.* The tariff also sets forth the procedures the Cable Companies must follow to obtain JPEC's authorization to make attachments, *id.* at Sheet 10.1-10.3, and it sets forth the penalty for attachments made without following the necessary procedures. *Id.* at Sheet 10.5. Specifically, the tariff provides that "[a]ny unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the *previously required inspection*." *Id.* (emphasis added). The Cable Companies and their predecessors have operated under the provisions of the

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*Landsdowne Cmty. Dev., LLC*, 215 F.Supp.2d 742, 751 and n. 30 (E.D. Va. 2002); *Gulf Power Co. v. FCC*, 208 F.3d 1263, 1266 and n.4 (11<sup>th</sup> Cir. 2000).

<sup>3/</sup> Prior to that time, pole attachment relationships were governed by private contracts between individual cable operators and utilities. Such private contracts pre-dating the *CATV Pole Attachment Order* were preempted and nullified by that order and tariffs subsequently approved by the Commission. *CATV Pole Attachment Order*, 49 P.U.R.4th at 136.

tariff, and paid fees for pole attachments consistent therewith, for nearly two decades.

5. The term "pole attachment" is not defined in the tariff.

However, it has been settled since the advent of cable television that cable operators pay for the use of one foot of space on utility poles. As stated by the United States Congress in 1977, "[b]y what is virtually a uniform practice throughout the United States, cable television is assigned 1 foot out of the 11 feet of usable space." S. Rep. No. 95-580, 95th Cong., 1st Sess. 13 (1977). Both the Federal Communications Commission, which regulates pole attachments in most of the country, and this Commission are in agreement that cable operators are responsible for one foot of space on utility poles. *CATV Pole Attachment Order*, P.U.R.4th at 133-35; *In re. Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 72 F.C.C.2d 59, 70 & n.26 (1979) ("We understand CATV cables are uniformly assigned an effective occupancy space of 1 foot, without regard to their actual  $\frac{3}{4}$  or  $\frac{1}{2}$  inch diameter."). In reliance on these historic understandings, as well as the explicit language in the *CATV Pole Attachment Order*, both JPEC and the Cable Companies have interpreted "pole attachment" to mean only a cable company's occupation of one foot of usable pole space, irrespective of whatever additional ancillary equipment is attached to a pole. <sup>4/</sup>

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<sup>4/</sup> See Exhibit A, Tab 1, Affidavit of Dale Haney, General Manager, Charter Communications ("Haney Aff."); *id.* at Tab 2, Affidavit of Ed Mount, Vice President and General Manager, Comcast Cablevision of Paducah, Inc. ("Mount Aff."); *id.* at Tab 3, Affidavit of Greg LeMaster, Senior Director of Operations, Mediacom Communications Corporation ("Le Master Aff.") (each attesting to the 20-year cable pole attachment business practices of JPEC).

6. Until it adopted its unique and revised definition of what constitutes a pole attachment in 2002, JPEC never, in the time since it began tariffing pole attachments, counted service drops attached to the cable strand near a pole, attachments to drop poles, or any type of ancillary equipment such as risers, guys, equipment enclosures, etc. as separate attachments for billing purposes. See Exh. A, Tab 1 at ¶ 3 (Haney Aff.); Tab 2 at ¶ 3 (Mount Aff.); Tab 3 at ¶ 3 (LeMaster Aff.). JPEC held the Cable Companies responsible for the use of one foot of space on a distribution pole, and billed this as a single attachment, and the Cable Companies timely remitted payment for these charges.

7. In late 2001 or early 2002, Richard T. Sherrill was appointed JPEC's new Vice President of Distribution and Engineering. See Exh. B, Tab 4. Shortly after he took over his responsibilities, JPEC conducted a field audit of the "attachments" made by the Cable Companies to JPEC poles. Along with correspondence dated February 27, 2002, March 6, 2002, and March 20, 2002, the Cable Companies received from Mr. Sherrill their annual pole attachment invoices. <sup>5/</sup> In the letters accompanying the invoices, Mr. Sherrill indicated that, unlike prior years, the Cable Companies would be billed under a revised, greatly expanded definition of "pole attachment." See Exh. C, Tabs 1, 3 and 4.

8. JPEC's new definition of "pole attachment" includes not only the single messenger strand to which the Cable Companies lash their communications wires, but also ancillary facilities such as risers, guys and equipment enclosures, as well as service drops, whether attached to poles or to

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<sup>5/</sup> See Exhibit C for copies of correspondence from Mr. Sherrill to the CATV Companies regarding the new invoicing and the CATV Companies' responses to same.

the cable operators' strand within 15 inches of the pole. Under JPEC's new and unprecedented formulation, each of these items constitutes a separate "pole attachment" for purposes of the annual rental fee and for calculating penalties for unauthorized attachments. See Exh. C, Tabs 1, 3 and 4.; Exh. B, Tab 4 (Letter of Frank N. King, Jr., Counsel for JPEC, to Gardner F. Gillespie, Counsel for KCTA (dated July 19, 2002)).

9. Based on the parties' historic understanding of what constitutes a "pole attachment" pursuant to the Commission's *CATV Pole Attachment Order* and JPEC's tariff, in 2001 JPEC billed Charter for 336 attachments (\$762.72), Comcast for 4270 attachments (\$8,993.50) and Mediacom for 1598 attachments (\$3,357.70). See Exh. A, Tab 1 at ¶ 7 (Haney Aff.); Tab 2 at ¶ 7 (Mount Aff.); and Tab 3 at ¶ 7 (LeMaster Aff.); see also Exh. D. Under JPEC's new definition of what constitutes an "attachment," JPEC determined that Charter currently has 1354 attachments, Comcast 8576 attachments and Mediacom 3382 attachments, an overall increase in attachments of 115 percent.

10. The 2002 invoices also arbitrarily assessed penalties on the Cable Companies for "unauthorized attachments" dating back to 1990. <sup>6/</sup> In determining the number of allegedly "unauthorized attachments," JPEC simply subtracted the number of attachments that it had billed the Cable Companies for in 2001 from the number of "attachments" it had counted in its field audit, using its new, expansive definition. JPEC submitted bills to the Cable Companies for

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<sup>6/</sup> See Exh. C, Tabs 1, 3 and 4. JPEC back-billed Mediacom for alleged unauthorized attachments back to 1988. *Id.* at Tab 3.



double the current pole attachment rate for each "unauthorized attachment" for 13 years. These penalties billed amount to \$54,738.22 for Charter; \$234,034.00 for Comcast; and \$105,226.29 for Mediacom. Exh. C., Tabs 1, 3 and 4.

11. In correspondence from March 2002 through February 2003, the Cable Companies protested JPEC's actions, and attempted to obtain specific information relating to the field audit. JPEC refused to provide the information. <sup>7/</sup> JPEC did acknowledge, however, that prior to the field audit in 2002, it had not made any effort to count the number of attachments *at least* since 1987. Indeed, it is not clear whether JPEC had made *any* effort to audit its pole attachments since its tariff first went into effect in 1984. In the "calculation of penalty billing" (dated February 25, 2002) accompanying Charter's 2002 invoice from Mr. Sherrill to John Hudak, then Plant Manager of Charter, Mr. Sherrill states: "We find no records indicating that an inspection has been performed since at least 1984." See Exh. C, Tab 1. Similarly, in the calculation of penalty billing (dated March 6, 2002) accompanying Mediacom's 2002 invoice to Scotty Power, Purchasing Supervisor of Mediacom, Mr. Sherrill states: "We find no records indicating that an inspection has been performed since at least 1987." *Id.*, Tab 3. Likewise, in the calculation of penalty billing (dated March 15, 2002) accompanying Comcast's 2002 invoice to Dennis Graham, Chief Technician of Comcast, Mr. Sherrill states: "We find no records indicating when, if ever, a system wide inspection (count) was last performed." *Id.*, Tab 4.

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<sup>7/</sup> See Exhibit B for copies of correspondence between KCTA counsel and JPEC.

12. Notwithstanding their concerns with JPEC's new tactics, the Cable Companies remitted payment for the portion of their 2002 invoices billing them for their current pole attachment rental fees. Charter remitted \$11,557.82 for a portion of the 2002 invoice, based on one attachment per pole under the 2002 pole count, including all attachments JPEC claimed were unauthorized, which Charter paid under the tariff rate of two times the annual fee for two years. 8/ Comcast remitted \$15,288.62 for the portion of the 2002 invoice based on one attachment per pole under JPEC's count of poles to which Comcast has at least one attachment. 9/ Mediacom remitted \$6,869.41 for JPEC's 2002 invoice based on JPEC's count of attachments under its pole audit, using JPEC's newly revised definition of "pole attachments." 10/

13. The Cable Companies refused, however, to accede to JPEC's other demands, and informed JPEC that the cooperative was acting in violation of its tariff, Kentucky law, and 20 years of the parties' mutual interpretation of the tariff. 11/ Undeterred, on January 30, 2003, JPEC served KCTA's counsel a letter demanding remittance of the alleged unauthorized attachment penalties, and threatening legal action against the Cable Companies if payment was not made by February 15, 2003.

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8/ See Exh. A, Tab 1 at ¶ 8 (Haney Aff.).

9/ See *id.*, Tab 2 at ¶ 8 (Mount Aff.).

10/ See *id.*, Tab 3 at ¶ 8 (LeMaster Aff.).

11/ See Exh. B, Tabs 1, 5 and 6.

## CLAIMS FOR RELIEF

### I. UNLAWFUL IMPOSITION OF NEW RATES FOR POLE ATTACHMENTS

14. KCTA restates and reincorporates above paragraphs 1 through 13 as if fully set forth herein.

15. This Commission has accepted the widely understood definition of a "pole attachment," holding cable operators "responsible for the use of one foot of the usable space on poles." *CATV Pole Attachment Order*, 49 P.U.R.4th at 133-35.

16. The Commission's definition of what constitutes an "attachment" not only followed what Congress had stated was the "virtually a uniform practice throughout the United States" of assigning the cable operator one-foot of pole space, S. Rep. No. 95-580, 95th Cong., 1st Sess. 13 (1977), but was agreed to by all of the parties in the Kentucky generic pole attachment proceeding in 1982, 49 P.U.R. 4th at 133-36, and is consistent with the interpretation in every other state and by the Federal Communications Commission ("FCC"). The FCC, which regulates pole attachment decisions for the majority of the states, 12/ has found that cable communication wires lashed to the same messenger strand, along with the guying and anchoring needed for that strand, constitute "a single attachment to the pole." *Selkirk Communications, Inc. v. Florida Power & Light Co.*, 8 FCC Rod.367, ¶¶ 6-7 (1993). See also *Amendment of Commission's Rules and Policies Governing Pole Attachments*,

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12/ 47 U.S.C. § 224 provides that the FCC shall regulate pole attachments in any state where the state does not itself certify that it regulates pole attachments. Kentucky is one of 17 states that exercise their own pole attachment jurisdiction.

16 FCC Rcd 12103, 12129-30, 12141, ¶¶ 49, 75 (2001) (*Pole Attachment Partial Recon. Order*) (cable operator uses only one foot of pole space, and therefore makes only one attachment, even when its facilities are overlashed).

17. In reliance on the historic understanding of what constitutes a "pole attachment," and consistent with industry practice – including that of other utilities in Kentucky – JPEC and the Cable Companies have since 1984 construed the term "pole attachment" under JPEC's tariff to treat the placement of a messenger strand, along with lashed and appurtenant equipment, as a single "pole attachment." See Exh. A, Tab 1 at ¶ 3 (Haney Aff.); Tab 2 at ¶ 3 (Mount Aff.); Tab 3 at ¶ 3 (LeMaster Aff.). Service drops, risers, guy wires and equipment enclosures have never been counted as "attachments." JPEC and the Cable Companies accepted this definition for almost twenty years. Exh. A, Tab 1 at ¶ 3-4 (Haney Aff.); Tab 2 at ¶ 3-4 (Mount Aff.); Tab 3 at ¶ 3-4 (LeMaster Aff.).

18. With a single exception, the types of things that JPEC would now count as "attachments" have never been treated as attachments in any jurisdiction of which we are aware. First of all, equipment enclosures and risers do not foreclose the use of any of the "usable space" on poles. "Usable space" is the space that is found above the minimum grade level on poles that is usable for the attachment of wires, cables and associated equipment. 49 P.U.R. 4<sup>th</sup> at 133; 47 U.S.C. § 224(d)(2). Pole attachments as defined by both the Kentucky PSC and the FCC are deemed to use up one foot of usable pole space. Indeed, the pricing formulas used by this Commission and the FCC allocate to the cable operator one foot of the pole's "usable space." Were equipment placed on other

portions of the pole to be treated as an "attachment," the pricing methodology would make no sense. Since equipment enclosures and risers do not use up any usable pole space, they do not constitute "pole attachments."

19. Nor do service drops that are attached to a cable operator's strand within 15 inches of the pole count as "attachments." JPEC's effort to count the attachment of a service drop to the *messenger strand* as an attachment to the *pole* demonstrates the lengths to which JPEC is willing to stretch logic to increase the number of "attachments" for which it may bill cable operators.

20. In the past, like many other cooperative utilities, JPEC has not treated attachment of service drops to drop poles as "attachments" for purposes of pole attachment billings. See Exh. A, Tab 1 at ¶ 3 (Haney Aff.); Tab 2 at ¶ 3 (Mount Aff.); Tab 3 at ¶ 3 (LeMaster Aff.). KCTA does not object to the treatment of drop attachments as "pole attachments" for purposes of pole attachment billings – going forward. But the placement of a number of drop wires on a single piece of hardware does not multiply the number of "pole attachments." Moreover, since JPEC has not previously treated drop pole attachments as "pole attachments," they may not be considered to be "unauthorized" and subject to penalty. 13/

21. The understanding of what constitutes a "pole attachment" is essential to determining how many attachments the Cable Companies have on JPEC's poles, and in turn to determining how much they should pay JPEC in

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13/ KCTA and the Cable Companies do not know how many drop poles were identified in JPEC's audit; JPEC has refused to provide that information.

pole attachment fees. JPEC's unique definition thus substantively modifies the pole attachment rates the Cable Companies pay pursuant to the tariff, and materially alters the Cable Companies' payment obligations. As such, the definition of "pole attachment" makes up part of JPEC's "rate" for pole attachments under its tariff. Under Kentucky law, the "rate" charged by any covered utility includes "any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered . . . , *and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental or other compensation[.]*" KY. REV. STAT. ANN. § 278.010(12) (emphasis added).

22. JPEC's unilateral decision to modify its definition of "pole attachment" therefore violates both KY. REV. STAT. ANN. § 278.160 and 807 K.A.R. 5:011, which obligate JPEC to follow statutory and Commission tariff procedures before imposing new rates. KY. REV. STAT. ANN. § 278.160(1); 807 K.A.R. 5:011. Specifically, Section 278.160 of the Kentucky Revised Statutes succinctly states JPEC's tariffing responsibilities:

- (1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. . . (2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules[.]

KY. REV. STAT. ANN. § 278.160(1) & (2). JPEC has not fulfilled these requirements with respect to its attempt to redefine what constitutes a "pole attachment" under its tariff and to bill the Cable Companies accordingly. <sup>14/</sup>

23. Because JPEC has failed to satisfy the requirements of Section 278.160 of the Kentucky Statutes and Section 5.011 of the Commission's rules prior to invoicing the Cable Companies under JPEC's capricious definition of "pole attachment," its new practices and charges are illegal and unenforceable. In addition, JPEC's unprecedented and expansive definition of "pole attachment" is inconsistent with the parties' longstanding past course of dealing, industry practice, and this Commission's assignment of one foot of pole space to cable operators in the *CATV Pole Attachment Order*. JPEC's definition is also inconsistent with the way that the FCC and all other state commissions

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<sup>14/</sup> JPEC has relied upon an "amendment" to an agreement it has with third-party cable operator, Galaxy Cable, Inc. ("Galaxy"), which is not a member of KCTA. See Exh. B, Tab 7. That JPEC has strong-armed a small, independent cable company into signing an "amendment" of dubious legality has no bearing here. As noted in the text, the Cable Companies take service from JPEC pursuant to the tariff, which can be modified only in accordance with 807 K.A.R. § 5:011 of the Commission's rules, of which JPEC has clearly not availed itself. While Comcast and Mediacom have "agreements" with JPEC, they simply incorporate the tariff as the operative legal document (Charter has no such agreement with JPEC). See Exhibit E for copies of the agreements.

In any event, JPEC filed the Galaxy amendment with the Commission on January 21, 2003, apparently pursuant to 807 K.A.R. 5:011(13). KCTA notes that the Commission staff apparently mistook the date of the amendment (December 27, 2002) with the date of filing (January 21, 2003) and stamped the effective date of the amendment as "January 26, 2003." See Exh. B, Tab 7. KCTA notes that the correct effective date of the amendment therefore should be February 20, 2003, such that the amendment is not even effective as of the date of this complaint. Moreover, the administrative function of effectively stamping a tariff amendment as "received" does not support JPEC's suggestion that this Commission has somehow substantively "approved the amendment as of January 26, 2003." *Id.*

have defined "pole attachment." Consequently, JPEC's new interpretation of its tariff is impermissible and unenforceable.

## II. UNLAWFUL BACK-BILLING OF UNAUTHORIZED ATTACHMENTS

24. KCTA restates and reincorporates above paragraphs 1 through 23 as if fully set forth herein.

25. JPEC's tariff provides that "[a]ny unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the *previously required inspection*." Tariff at Sheet 10.5 (emphasis supplied).

26. Section 25(4)(d) of 807 K.A.R. 5:006 requires that "[a]t intervals not to exceed two (2) years," utilities must "inspect electric lines operating at voltages of less than sixty-nine (69) KV, including insulators, conductors and supporting facilities." Such lines and supporting facilities include JPEC's electric poles and the Cable Companies' attachments on them. In fact, the Commission specifically relied upon this biannual inspection requirement in permitting utilities to charge unauthorized attachment fees in the *CATV Pole Attachment Order*. See 49 P.U.R.4th at 130, 135 (citing 807 K.A.R. 5:006, §22 (renumbered at 807 K.A.R. 5:006, § 25(4)(d)). The Commission anticipated in the *Pole Attachment Order* that utilities would rely on these inspections to establish and maintain an inventory of attachments on their poles. See *id.* at 130, 135 (citing 807 K.A.R. 5:006, § 22) ("We see no reason why special inventories should be made for this purpose, but should be accomplished in



conjunction with the periodic inspections of pole plant required by commission regulations.”).

27. As 807 K.A.R. 5:006, § 25 clearly obligates JPEC to inspect its pole plant at least once every two years, the maximum period for which JPEC could impose a penalty on the Cable Companies (assuming there are any unauthorized attachments), would be two years. 15/

28. JPEC's January 30, 2003 demand letter and its 2002 invoices attempting to penalize the Cable Companies for alleged "unauthorized attachments" for the preceding 13 years (to 1990) thus violate the *CATV Pole Attachment Order* and JPEC's tariff. Even assuming that unauthorized attachments exist, the maximum period of time to which JPEC could penalize the Cable Companies would be two years. JPEC's effort to collect unauthorized attachment penalties predating that period is therefore unlawful. 16/

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15/ KCTA notes that the FCC has addressed the problem of utilities attempting to backbill cable operators for unauthorized attachment fees based on new interpretations of what constitutes an authorized attachment after years of failing to conduct inspections. See *Mile Hi Cable Partners v. Pub. Serv. Co. of Colorado*, 17 FCC Rcd 6268 (2002) ("*Mile Hi Recon. Order*"); *Mile Hi Cable Partners v. Pub. Serv. Co. of Colorado*, 15 FCC Rcd 11450 (Cable Servs. Bur. 2002) ("*Mile Hi Order*"). In *Mile Hi*, the utility sought to back-bill for the preceding 14 years for "unauthorized attachments," including those on drop poles, even though it previously did not require authorization for such poles or charge rental fees for them. The FCC held that the utility's charges were unjust and unreasonable, especially since the utility had conducted two partial pole audits during the 14 years. *Mile Hi Recon. Order*, 17 FCC Rcd at 6271-74; *Mile Hi Order*, 15 FCC Rcd at 11456-60 and n.79. It also held that, while it would be reasonable for a utility to count drop poles as separate attachments going forward, the course of dealing between the cable operator and utility precluded retroactively counting such attachments as unauthorized and seeking to back-bill penalties. *Mile Hi Recon. Order*, 17 FCC Rcd at 6273-74; *Mile Hi Order*, 15 FCC Rcd at 11460-61.

16/ The Cable Companies cannot verify whether there are unauthorized attachments or not because JPEC has not cooperated in providing the requisite field audit data, methodology, and other specific, related, information. KCTA and

## PRAYER FOR RELIEF

WHEREFORE, KCTA requests that the Commission:

- (1) find JPEC's imposition of pole attachment fees and unauthorized attachment penalties based on a new interpretation of "pole attachment" under its tariff in violation of KY. REV. STAT. ANN. § 278.160 and 807 K.A.R. 5:011;
- (2) find JPEC's redefinition of "pole attachment" to count risers, guys, equipment enclosures, and drop wires attached to cable strand within 15 inches of the pole, and more than one wire attached to the same bolt as separate "pole attachments" to be inconsistent with the tariff and the *CATV Pole Attachment Order* and therefore unlawful;
- (3) order JPEC to refund any overpayments submitted by any of the Cable Companies based on JPEC's improper definition of "pole attachment" for its 2002 invoices;
- (4) find that JPEC's assessment of unauthorized attachment penalties may date back no more than the maximum permitted two years between inspections required by 807 K.A.R. 5:006, § 25;
- (5) order JPEC to provide the Cable Companies with the entirety of its relevant field audit data, its prior and current methodology for

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the Cable Companies acknowledge that, if JPEC can demonstrate that in the last two years the Cable Companies have either made attachments for which they did not apply, or that they added, without application, cable or equipment resulting in the use of more than one foot of space on poles that were previously authorized, the Cable Companies will remit payment for unauthorized attachment penalties for up to two years for those attachments.

calculating "unauthorized attachments," and other specific information required by the Cable Companies to verify JPEC's claims of unauthorized attachments; and

(6) order JPEC to cease and desist from invoicing the Cable Companies for pole attachments according to JPEC's non-tariffed and unlawful pole attachment rates, terms and conditions.

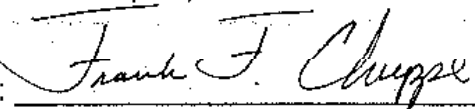
Respectfully submitted,

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ASSOCIATION**

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Its Attorneys

February 14, 2003

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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Murray, Kentucky )

Ss.

**AFFIDAVIT OF DALE HANEY**

Dale Haney, being first duly sworn, on his oath states:

1. I hereby swear and affirm under penalty of perjury that the following is true and correct to the best of my recollection, knowledge, understanding and belief.

2. My name is Dale Haney. I am General Manager for Charter Communications ("Charter"). My business address is 906 S. 12<sup>th</sup> Street, Murray, Kentucky, 42071.

3. Charter takes service from Jackson Purchase Energy Corporation ("JPEC") for pole attachments pursuant to the rates, terms and conditions of JPEC's Kentucky P.S.C. Tariff (currently No. 7) and has done so (either directly or through predecessors-in-interest) since the inception of the tariff in mid-1983. Throughout that time, both JPEC and Charter have interpreted the term "pole attachment" in the tariff to mean, to the best of my knowledge and belief, only Charter's occupation of one foot of usable pole space, irrespective of whatever additional ancillary equipment is attached to a pole. JPEC never, prior to 2002, counted service drops attached to the cable strand near a pole, attachments to drop poles, or any type of ancillary equipment such as risers, guys, equipment enclosures, etc. as separate attachments for billing purposes.

4. Until 2002, JPEC billed Charter and its predecessors-in-interest under the tariff without dispute. Charter and its predecessors have operated under the

provisions of JPEC's tariff, and have paid fees for pole attachments consistent therewith, for nearly two decades.

5. Beginning in early 2002, JPEC sought to invoice Charter under a revised understanding of the definition of "pole attachment" under the tariff. The new definition includes not only the single messenger strand to which the Charter lashes its communications wires, but also ancillary facilities such as risers, guys, equipment enclosures, as well as service drops, whether attached to poles or to the cable operators' strand within 15 inches of the pole. Under JPEC's new formulation, each of these items constitutes a separate "pole attachment" for purposes of the annual rental fee and for calculating penalties for unauthorized attachments.

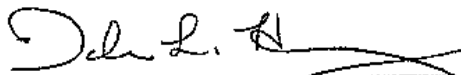
6. Charter received its annual pole attachment invoice from JPEC in correspondence dated February 26, 2002, addressed to John Hudak, Charter's Plant Manager at the time. Along with the invoice was a letter indicating that, unlike prior years, Charter would be billed under the new definition of "pole attachment." The letter stated that because, "[JPEC finds] no records indicating [a pole] inspection has been performed since at least 1984," JPEC was assessing penalties on Charter for "any current pole attachments under the new formula that were not authorized in 1984." JPEC chose 1990 as the date to which it would back-bill Charter in penalties for "unauthorized attachments", at twice the current tariffed rate. These penalties billed amount to \$51,816.48 for Charter.

7. Based on the parties' historic understanding of what constitutes a "pole attachment" under JPEC's tariff, in 2001 JPEC billed Charter for 336 attachments (\$762.72). Under JPEC's new definition of what constitutes an "attachment," JPEC determined that Charter currently has 1,354 attachments. Charter's 2002 invoice, including penalties dating back 13 years for "unauthorized attachments," is for \$54,738.22.

8. Charter initially protested JPEC's actions, seeking, without success, to obtain specific information relating to the field audit and an exact accounting of the methodology behind how JPEC arrived at its pole attachment count. (Though Charter was present for the field audit in the person of Brad King, its Senior System Technician, the audit was unusually confrontational, with JPEC setting unalterable "ground rules," including that Charter could observe, but not comment upon or contest, JPEC's counting of attachments during the audit.) JPEC has not provided Charter with this information. Notwithstanding its serious concerns with JPEC's new tactics, in March 2002 Charter remitted \$11,557.82 for a portion of the 2002 invoice. It based the payment amount on one attachment per pole under the 2002 pole count, including all attachments JPEC claimed were unauthorized, which Charter paid based on the tariff rate of two times the annual fee for two years.

9. When Charter learned that JPEC sought to bill other cable operators for pole attachments, and to apply penalties for "unauthorized attachments" as well, Charter joined the other cable operators in seeking assistance from the

Kentucky Cable Telecommunications Association ("KCTA"). On April 5, 2002, through KCTA counsel Charter attempted to again obtain specific information relating to the field audit and an exact accounting of the methodology underlying JPEC's pole attachment count. JPEC did not provide any of the information requested by KCTA, and Charter before it, and simply reiterated its demand that Charter and the other cable operators pay what JPEC had invoiced.

  
Dale H. Laney

Subscribed and sworn before me this 12<sup>th</sup> day of February 2003.

  
Notary Public

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of	)	
	)	
<b>Kentucky Cable</b>	)	
<b>Telecommunications Association,</b>	)	
Complainant,	)	
	)	
v.	)	<b>No. _____</b>
	)	
<b>Jackson Purchase Energy Corporation,</b>	)	
Respondent.	)	

Paducah, Kentucky                    )        Sa.

**AFFIDAVIT OF EDWARD MOUNT**

Edward Mount, being first duly sworn, on his oath states:

1. I hereby swear and affirm under penalty of perjury that the following is true and correct to the best of my recollection, knowledge, understanding and belief.
2. My name is Edward Mount. I am Vice President and General Manager for Comcast Cablevision of Paducah, Inc. ("Comcast"). My business address is 800 Broadway, P.O. Box 2700, Paducah, Kentucky, 42002 2700.
3. Comcast takes service from Jackson Purchase Energy Corporation ("JPEC") for pole attachments pursuant to the rates, terms and conditions of JPEC's Kentucky P.S.C. Tariff (currently No. 7) and has done so (either directly or through predecessors-in-interest) since the inception of the tariff in mid-1983. Throughout that time, both JPEC and Comcast have interpreted the term "pole attachment" in the tariff to mean, to the best of my knowledge and belief, only Comcast's occupation of one foot of usable pole space, irrespective of whatever additional ancillary equipment is attached to a pole. JPEC never, prior to 2002, counted service drops attached to the cable strand near a pole, attachments to drop poles, or any type of ancillary equipment such as risers, guys, equipment enclosures, etc. as separate attachments for billing purposes.
4. Until 2002, JPEC billed Comcast and its predecessors-in-interest under the tariff without dispute. Comcast and its predecessors have operated under the

provisions of JPEC's tariff, and have paid fees for pole attachments consistent therewith, for nearly two decades.

5. Beginning in early 2002, JPEC sought to invoice Comcast under a revised understanding of the definition of "pole attachment" under the tariff. The new definition includes not only the single messenger strand to which the Comcast lashes its communications wires, but also ancillary facilities such as risers, guys, equipment enclosures, as well as service drops, whether attached to poles or to the cable operators' strand within 15 inches of the pole. Under JPEC's new formulation, each of these items constitutes a separate "pole attachment" for purposes of the annual rental fee and for calculating penalties for unauthorized attachments.

6. Comcast received its annual pole attachment invoice from JPEC in correspondence dated March 20, 2002, addressed to Dennis Graham, Comcast's Chief Technician. Along with the invoice was a letter indicating that, unlike prior years, Comcast would be billed under the new definition of "pole attachment." The letter stated that the invoice was "based upon the field attachment count just completed" and the invoice indicated that "[w]e find no records indicating when, if ever, a system wide inspection (count) was last performed." The invoice "assume[d] . . . that one was performed in conjunction with the execution of the [parties'] last pole agreement," but gave no evidence that this was the case. In any event, JPEC chose "1990 as the beginning year for penalty assessment" to back-bill Comcast for "unauthorized attachments" at twice the current tariffed rate. These penalties billed amount to \$216,058.08 for Comcast.

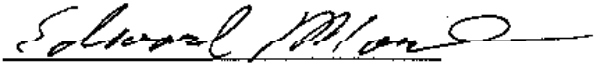
7. Based on the parties' historic understanding of what constitutes a "pole attachment" under JPEC's tariff, in 2001 JPEC billed Comcast for 4270 attachments (\$8,993.50). Under JPEC's new definition of what constitutes an "attachment," JPEC determined that Comcast currently has 8576 attachments. Comcast's 2002 invoice, including penalties dating back 13 years for "unauthorized attachments," is for \$234,034.00.

8. Comcast initially protested JPEC's actions, seeking, without success, to obtain specific information relating to the field audit and an exact accounting of the methodology behind how JPEC arrived at its pole attachment count. JPEC has not provided Comcast with this information. Notwithstanding its serious concerns with JPEC's new tactics, in April 2002 Comcast remitted \$15,288.62 for a portion of the 2002 invoice based on one attachment per pole under JPEC's count of poles to which Comcast has at least one attachment.

9. When Comcast learned that JPEC sought to bill other cable operators for pole attachments, and to apply penalties for "unauthorized attachments" as well, Comcast joined the other cable operators in seeking assistance from the Kentucky Cable Telecommunications Association ("KCTA"). On April 5, 2002, through KCTA counsel Comcast attempted to again obtain specific information relating to the field audit and an exact accounting of the methodology underlying JPEC's pole

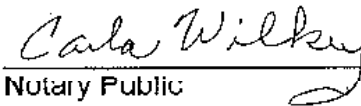


attachment count. JPEC did not provide any of the information requested by KCTA, and Comcast before it, and simply reiterated its demand that Comcast and the other cable operators pay what JPEC had invoiced.



Edward Mount

Subscribed and sworn before me this 12<sup>th</sup> day of February 2003.



Notary Public

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of )  
 )  
**Kentucky Cable** )  
**Telecommunications Association,** )  
Complainant, )  
 )  
v. )  
 )  
**Jackson Purchase Energy Corporation,** )  
Respondent. )

No. \_\_\_\_\_

Benton, Kentucky ) Ss.

**AFFIDAVIT OF GREG LEMASTER**

Greg LeMaster, being first duly sworn, on his oath states:

1. I hereby swear and affirm under penalty of perjury that the following is true and correct to the best of my recollection, knowledge, understanding and belief.
2. My name is Greg LeMaster. I am Senior Director of Operations for Mediacom Communications Corporation ("Mediacom"). My business address is 90 Main Street, Benton, Kentucky, 42025.
3. Mediacom takes service from Jackson Purchase Energy Corporation ("JPEC") for pole attachments pursuant to the rates, terms and conditions of JPEC's Kentucky P.S.C. Tariff (currently No. 7) and has done so (either directly or through predecessors-in-interest) since the inception of the tariff in mid-1983. Throughout that time, both JPEC and Mediacom have interpreted the term "pole attachment" in the tariff to mean, to the best of my knowledge and belief, only Mediacom's occupation of one foot of usable pole space, irrespective of whatever additional ancillary equipment is attached to a pole. JPEC never, prior to 2002, counted service drops attached to the cable strand near a pole, attachments to drop poles, or any type of ancillary equipment such as risers, guys, equipment enclosures, etc. as separate attachments for billing purposes.

4. Until 2002, JPEC billed Mediacom and its predecessors-in-interest under the tariff without dispute. Mediacom and its predecessors have operated under the provisions of JPEC's tariff, and have paid fees for pole attachments consistent therewith, for nearly two decades.

5. Beginning in early 2002, JPEC sought to invoice Mediacom under a revised understanding of the definition of "pole attachment" under the tariff. The new definition includes not only the single messenger strand to which the Mediacom lashes its communications wires, but also ancillary facilities such as risers, guys, equipment enclosures, anchors, as well as service drops, whether attached to poles or to the cable operators' strand within 15 inches of the pole. Under JPEC's new formulation, each of these items constitutes a separate "pole attachment" for purposes of the annual rental fee and for calculating penalties for unauthorized attachments.

6. Mediacom received its annual pole attachment invoice from JPEC in correspondence dated March 6, 2002, addressed to Scotty Power, Mediacom's Purchasing Supervisor. Along with the invoice was a letter indicating that, unlike prior years, Mediacom would be billed under the new definition of "pole attachment." The "calculation of penalty billing" that accompanied the letter and invoice stated that the invoice was "based upon the field attachment count just completed" and the invoice indicated that "[w]e find no records indicating that an inspection has been performed since at least 1987. However, we have chosen 1988 as the beginning year fix [sic] penalty assessment . . ." JPEC, on this basis, then purported to back-bill Mediacom to 1988 for "unauthorized attachments" at twice the current tariffed rate. These penalties billed amount to \$98,355.88 for Mediacom.

7. Based on the parties' historic understanding of what constitutes a "pole attachment" under JPEC's tariff, in 2001 JPEC billed Mediacom for 1598 attachments (\$3,357.70). Under JPEC's new definition of what constitutes an "attachment," JPEC determined that Mediacom currently has 3382 attachments. Mediacom's 2002 invoice, including penalties dating back 13 years for "unauthorized attachments," is for \$105,226.29.

8. Mediacom initially protested JPEC's actions, seeking, without success, to obtain specific information relating to the field audit and an exact accounting of the methodology behind how JPEC arrived at its pole attachment count. JPEC has not provided Mediacom with this information. Notwithstanding its serious concerns with JPEC's new tactics, in March 2002, Mediacom remitted \$6,869.41 for JPEC's 2002 invoice based on JPEC's count of attachments under its pole count, using JPEC's newly revised definition of "pole attachments."

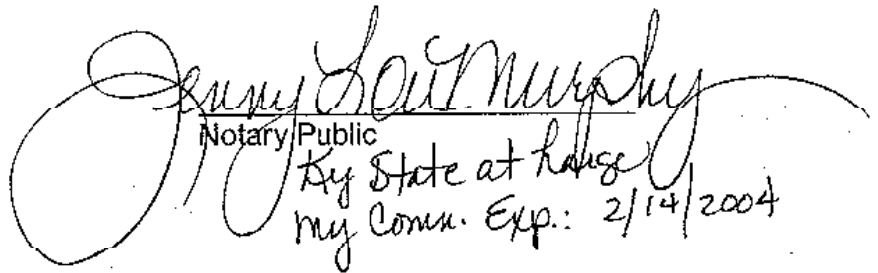
9. When Mediacom learned that JPEC sought to bill other cable operators for pole attachments, and to apply penalties for "unauthorized attachments" as well, Mediacom joined the other cable operators in seeking assistance from the Kentucky Cable Telecommunications Association ("KCTA"). On April 5, 2002, through KCTA counsel Mediacom attempted to again obtain specific information relating to the

field audit and an exact accounting of the methodology underlying JPEC's pole attachment count. JPEC did not provide any of the information requested by KCTA, and Mediacom before it, and simply reiterated its demand that Mediacom and the other cable operators pay what JPEC had invoiced.



Greg LeMaster

Subscribed and sworn before me this 13<sup>th</sup> day of February 2003.



Notary Public  
Ky State at Large  
my Comm. Exp.: 2/14/2004

HOGAN & HARTSON  
L.L.P.

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April 5, 2002

**By Facsimile and First-Class Mail**

Mr. Richard T. Sherrill  
Vice President of Distribution and Engineering  
Jackson Purchase Energy Corporation  
P.O. Box 4030  
2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

**Re: Pole Attachment Billings**

Dear Mr. Sherrill:

This letter is written on behalf of the Kentucky Cable Telecommunications Association ("KCTA") and its members: Charter Communications, Comcast Cable of Paducah and Mediacom. We have been asked to write to you regarding recent correspondence and invoices sent by Jackson Purchase Energy Corporation to KCTA members related to unauthorized attachments. In those invoices, Jackson Purchase has billed cable operators for many years at twice the annual pole attachment rate for allegedly unauthorized attachments. In a recent letter to Charter Communications in Murray, Kentucky, you have threatened "to begin proceedings to deny Charter Communications the right to attach to [Jackson Purchase's] poles."

KCTA represents the cable industry in Kentucky on pole attachment issues. KCTA and its members do not dispute the appropriateness of Jackson Purchase billing for unauthorized attachments at twice the authorized pole attachment rate for the number of years since "the last previous required inspection," as set forth in Jackson Purchase's tariff and in the Kentucky PSC's Order in Administrative Case No. 251. We have two fundamental problems/questions related to Jackson Purchase's invoices: (1) the number of alleged unauthorized attachments, and (2) the time period covered.

Mr. Richard T. Sherrill

April 5, 2002

Page 2

Please advise me, with specificity, how the alleged number of unauthorized attachments was determined. It is my understanding that an effort was made to count all of the attachments by KCTA members on Jackson Purchase's poles, but that the count may have included more than one attachment per pole and may also have included power supplies, overlashed wires, risers and drop poles that were not traditionally charged. Please provide me the answers to the following:

1. Where more than one attachment per pole was counted, what criteria did Jackson Purchase use to determine whether more than one attachment was involved?
2. If Jackson Purchase counted more than one attachment on poles because the cable operator's facilities are attached to the pole at more than one location on the pole (by separate bolts), how far apart are the bolts? Did Jackson Purchase count more than one attachment where two bolts are within 12 inches of one another?
3. How did Jackson Purchase determine that one or more of these "attachments" was not "authorized"?
4. How did Jackson Purchase treat situations where the cable operator uses a "riser" on the pole to go from an underground to aerial facility?
5. Did Jackson Purchase count power supplies as attachments? If so, what company is responsible for placing power supplies on Jackson Purchase's poles?
6. Did Jackson Purchase count cables overlashed to a single bolt as more than a single attachment?
7. Did Jackson Purchase count attachments to drop/lift poles? If so, what year did Jackson Purchase begin to count such attachments for purposes of pole attachment billing?
8. Exactly how did Jackson Purchase determine the base number of authorized attachments? If Jackson Purchase used some determination of the number of attachments made at some prior point in time (augmented perhaps by additional authorizations since that time), what was the basis for the original determination?

Mr. Richard T. Sherrill

April 5, 2002

Page 3

9. Is Jackson Purchase able to verify, under oath, that its record-keeping of authorized attachments is an accurate reflection of those poles for which cable operators applied for, or gave notice of, attachment?

We need the answers to these questions to evaluate both the proper number of current attachments and whether the attachments should be considered not to have been authorized.

Furthermore, no cooperative or other utility pole owner, by failing to conduct inspections on a regular basis, may seek to obtain double pole attachment fees. Even if attachments have not been authorized in some instances, the Kentucky Commission did not intend that cable operators pay double for 10 years or more for attachments that may have been made last year. Under 807 KAR 5:006 Section 25, electric utilities are required to make systematic inspections of their systems every two years. Accordingly, the time period for such unauthorized attachment penalties should not exceed two years.

Please do not misunderstand KCTA's position here. KCTA does not contest the appropriateness of doubled annual fees for any attachments (1) which are properly counted as attachments, (2) which were required to have been authorized by Jackson Purchase according to the custom at the time that the attachment was made, and (3) which have not been authorized. Nor does KCTA dispute Jackson Purchase's right to impose a double fee for a reasonable time period between "required inspections." It is hoped that after Jackson Purchase has answered the questions noted above, we will be able to agree on the appropriate methodology for determining the number of attachments that should be counted today, the number of those attachments which may reasonably be considered not to have been "authorized," and the time period since the last "required inspection."

In the meantime, we regret your heavy-handed effort to impose Jackson Purchase's unjustified charges by threatening to take some undisclosed action to deny KCTA's members pole attachment rights if the total invoiced amounts are not immediately paid. In view of our apparent disagreement regarding the meaning of Jackson Purchase's tariff, if we cannot reach agreement on that meaning, we will seek to have the Public Service Commission determine whether Jackson Purchase's actions are permissible. Please be advised that KCTA is prepared to have the PSC resolve the matter if necessary, though we hope that we can resolve the matter informally with you. On behalf of

HOGAN & HARTSON LLP

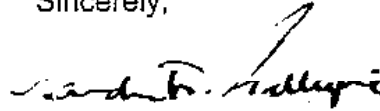
Mr. Richard T. Sherrill

April 5, 2002

Page 4

KCTA, Charter, Comcast and Mediacom, please treat this letter as disputing any basis for termination of service under 807 KAR 5:006 § 13(5).

Sincerely,



Gardner F. Gillespie

cc: Patsy Judd  
Hunt Brown, Esq.  
Ed Mount  
Greg LeMaster







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ATTORNEYS-AT-LAW

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HENDERSON, KENTUCKY 42420

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FRANK N. KING, JR.

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July 19, 2002

Mr. Gardner F. Gillespie  
Hogan & Hartson  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D.C. 20004-1109

Re: Pole Attachments Billings  
Your clients: Charter  
Communications, Comcast  
Cable of Paducah and  
Mediacom

Dear Mr. Gillespie:

This is in reply to your April 5, 2002, letter to Richard T. Sherrill of Jackson Purchase Energy Corporation ("JPEC") regarding the above. As discussed earlier, we are representing JPEC in this matter.

Mr. Sherrill recently became JPEC's Vice President of Operations and Engineering. He discovered that there were many more pole attachments on the JPEC system than had been reported by the cable television operators, and for which the operators had been billed. He conducted one-on-one meetings with representatives of your clients and presented them with a memorandum addressing JPEC's definitions of pole attachments. A copy of this memorandum is enclosed. Your clients' representatives had no problems with the definitions and accepted them. (In the case of Comcast the representative did say that he would have to "take it upstairs for review;" however, JPEC never received word of any disagreement.)

After the meetings the respective representatives and personnel of JPEC went into the field and conducted an actual count. Following is a result of that count, verified by your clients' representatives, which sets forth the number of unauthorized two-party and three-party attachments:

Charter Communications - Two-party, 726; three-party, 292

Comcast - Two-party, 2,821; three-party, 1,485

Mediacom - Two-party, 188; three-party, 1,379

Page 2  
July 19, 2002

JPEC is a nonprofit electric cooperative corporation and is exempt from the federal pole attachment regulations administered by the Federal Communications Commission. However, as you are aware, the federal definition of "pole attachment" is quite broad and includes "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit or right-of-way owned or controlled by a utility" 47 U.S.C. §224(a)(4). "Pole attachments" have not been specifically defined under Kentucky law. We are of the opinion that JPEC's definitions are consistent with the federal definition and those definitions used by most of the states regulating pole attachments, and that JPEC's definitions are certainly fair and reasonable. Moreover, these definitions were agreed to by your clients.

JPEC desires to get these disputes settled promptly and without lengthy and costly litigation. JPEC's position as to the amounts owed is set forth in Mr. Sherrill's letters to your respective clients, with the accompanying invoices. We request your reply setting forth your client's positions with respect to those demands.

Please note that Kentucky law allows collection of interest on liquidated amounts at the rate of 8% per annum (KRS 360.010(1)). If we are unable to achieve resolution accrued interest will be sought in any litigation which may ensue.

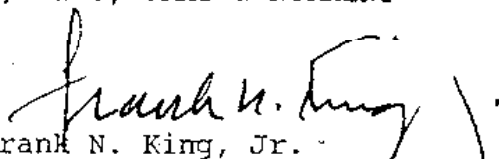
On another matter, the JPEC tariff requires that CATV operators provide proof of insurance (pages 10.5 and 10.6) and post a payment bond (pages 10.8 and 10.9). JPEC has requested these items from your clients but thus far the request has either been ignored or delayed. Please advise of your clients' respective positions with respect to production of these items.

I regret that it has taken so long to reply to your letter and I do intend to move matters along expeditiously now. We would appreciate your reply at your earliest convenience.

Very truly yours,

DORSEY, KING, GRAY & NORMENT

By

  
Frank N. King, Jr.

FNKJr/cds

Encls.

COPY: Mr. G. Kelly Nuckols

Mr. Richard T. Sherrill

## JOINT USER ATTACHMENTS

In the absence of contract definitions to the contrary, JACKSON PURCHASE ENERGY CORPORATION considers each of the following to constitute one (1) pole attachment. It is possible and, in fact, expected that each joint using company will have 2 or 3 attachments on many of our poles.

- A cable or service drop running parallel with our facilities
- A cable dead-ended on our pole.
- Overhead or down guys if they attach to the pole at an elevation different from the cable being supported.
- Service drops if they attach to the pole or the joint user cable within 15" of the pole or otherwise pass into the climbing space.
- Underground risers.
- Equipment enclosures

The only exception to the above would be a service drop from an underground system that rises up our pole and proceeds overhead to a single customer. We will count the riser and overhead service drop together as one attachment. However, if the riser serves more than one customer, it will be counted separately.

In those areas where the joint users system is underground and it uses our poles primarily for road crossings, all UG pedestals within 6 feet of one of our poles shall be counted as a "ground point" connection. We do not have a tariff for these at present but expect to request one during our next rate case.

### Examples:

- A main cable dead ends and goes underground. 2 attachments if guying is at same elevation, 3 if not.
- A main cable 90 degree corner due to our line doing same (e.g. a C-4) will be 1 attachment if guys are at same elevation. A 90 degree turn by the joint user alone will be 2 attachments minimum, perhaps as many as 4 if guying is not at same elevations.
- A service drop attached to a JPEC provided meter pole: 1 attachment.
- Multiple service drops attached to a lift pole: Attachment count equals number of service drops.
- A main cable attaches to our pole with an underground riser to serve an underground subdivision: 2 attachments.

HOGAN & HARTSON  
LLP

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FAX (202) 637-5910

August 6, 2002

Frank N. King, Jr.  
Dorsey, King, Gray & Norment  
310 Second Street  
Henderson, KY 42420

Re: Pole Attachment Billings

Dear Mr. King:

I have received your letter of July 19, 2002, in response to mine of April 5, 2002 to Richard T. Sherrill.

It is disappointing that after three and one-half months, you have not provided answers to any of the specific questions contained in my letter of April 5, other than to attach a page of typed notes that you indicate has already been supplied to the cable operators in JPEC's service area. Although you purport to desire to avoid "lengthy and costly litigation," you have treated my requests for information as if we were already in litigation and your client had no discovery obligations. I would respectfully suggest that if we are to "get those disputes settled promptly" you will need to be considerably more responsive and open with me than is reflected in your letter.

Our position is straightforward. We believe, first, that those members of the Kentucky Cable Telecommunications Association who are attached to JPEC's poles may be held responsible for an unauthorized attachment (double) fee for two years where attachments were required to be "authorized" by JPEC and were not. We also believe that JPEC may legitimately charge the tariffed pole attachment rate on a going forward basis for any separate "attachments" to JPEC's poles.

BRUSSELS BUDAPEST LONDON MOSCOW PARIS\* PRAGUE\* WARSAW

BALTIMORE, MD COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA MCLEAN, VA NEW YORK, NY ROCKVILLE, MD

\\DC - 50331/0001 - 1574290 v1

\*Affiliated Office

Frank N. King, Jr.  
August 6, 2002  
Page 2

As far as what legitimately may constitute an "attachment," it has been accepted for at least 25 years in every jurisdiction of which I am aware that a cable "attachment" consists of the strand and supporting hardware and cables that are attached to a pole within one foot of vertical space. Underlying the theory of what constitutes an attachment is the recognition that a cable attachment "occupies" one foot of pole space and thereby prevents any other "attachments" to be made in that space. "Attachments" do not include:

- Risers that attach vertically to the pole and do not foreclose the use of the pole's usable space for other attachments;
- Guy wires, wherever they attach;
- Service drops that are attached to the strand (and not the pole). (That a service drop may attach to the strand within 15 inches of a distribution pole does not make the drop an "attachment" to the pole.)
- Equipment enclosures.

Service drops that are attached to a single bolt on a lift pole, or that are located within one foot of vertical space, constitute only one attachment.

These matters have been settled for many years. For example, the Senate Report concerning the Federal Pole Attachments Act of 1978 noted that, "[b]y what is virtually a uniform practice throughout the United States, cable television is assigned 1 foot out of the 11 feet of usable space [on an average utility pole]." S.R. No. 95-580, 95th Cong. 1st Sess. 20 (1977). The same Senate Report noted that "[w]hile cable only physically occupies approximately 1 inch of this space, the clearance space between CATV and the next adjacent pole user is attributed to CATV." *Id.* The Kentucky Commission in its allocation of usable space to the cable attachment accepted the same theory. In particular, the Commission's Order in the generic case in 1982 notes that "[a]ll parties have agreed that CATV operators should be responsible for the use of one foot of the usable space on poles." In re. Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments, Administrative Case No. 251, at 13 (Sept. 17, 1982). I was counsel for the KCTA in that case. To the best of my recollection, no utility ever argued that attachments should be defined as anything other than as I have noted above. Nor am I aware of any other utility – in Kentucky or elsewhere – that has taken the position that the matters contained in the bulleted paragraphs above should be considered to be "attachments."

Frank N. King, Jr.  
August 6, 2002  
Page 3

In so far as the question of what constitutes an "unauthorized" attachment goes, it is obvious that the attachment must have been one that clearly required authorization by JPEC before the attachment can be considered to be "unauthorized." None of the alleged "attachments" discussed above meet that test. Nor would drop pole attachments made at a time that JPEC did not require separate approval for them, or attachments to poles that were previously owned by another party, such as the local telephone company. Finally, to subject a cable operator to an unauthorized attachment fee for a particular attachment, JPEC must establish that its record-keeping is sufficiently reliable to assure that the attachment in question was both (1) required to be authorized and (2) not properly authorized.

For attachments that meet these tests, as noted in my letter of April 4, the proper period for application of the unauthorized attachment fee in Kentucky is two years -- the period between required inspections. In any case, a utility may not abrogate its responsibilities to inspect with the expectation that it may then be able to collect unauthorized attachment fees going back an unreasonable period.

I hope that your client will reconsider its position as to what constitutes attachments and unauthorized attachments in light of the information contained in this letter. Obviously, the definition of a pole "attachment" which has been accepted for decades does not change simply because JPEC now has a new Vice President of Operations and Engineering. Although KCTA can appreciate Mr. Sherrill's desire to be sure that his tenure begins with a requirement that all attaching parties properly follow reasonable attachment procedures and not avoid their payment responsibilities, KCTA's members cannot agree to unwarranted expansions of their pole attachment financial obligations.

In settlement of this matter, I suggest that JPEC use the records from its recent pole audit to determine how many poles (including drop poles) are currently attached to by KCTA's members and then supply the back-up for those numbers to me. Once we can agree on the proper number of attachments going forward, we can be sure that JPEC is receiving all of the annual pole attachment revenue to which it is entitled. Even if the unauthorized attachment issue is more difficult to resolve, we can assure, at least, that the matter is settled on a going forward basis. Furthermore, all parties could have some faith for the future that any unauthorized attachments can be properly identified.



Frank N. King, Jr.  
August 6, 2002  
Page 4

After the number of poles to which KCTA's members are attached has been properly determined, we can consider the issue, going backwards, of what attachments, if any, are unauthorized. We require adequate assurances that JPEC's record-keeping is accurate and also that JPEC is not attempting to charge as unauthorized any attachments for which no authorization from JPEC was required at the time that the attachment was made.

We look forward to working with you to resolve this matter.

Sincerely,



Gardner F. Gillespie

cc: Patsy Judd  
Hunt Brown, Esq.  
Ed Mount  
Greg LeMaster  
Kyle Birch, Esq.

HOGAN & HARTSON  
L.L.P.

GARDNER F. GILLESPIE  
PARTNER  
(202) 637-8796  
GFGILLESPIE@HHHLAW.COM

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910  
WWW.HHHLAW.COM

December 17, 2002

Frank N. King, Jr.  
Dorsey, King, Gray & Norment  
318 Second Street  
Henderson, KY 42420

Re: Pole Attachment Billings

Dear Mr. King:

I have received your letter dated November 5, 2002. As I noted in our phone conversation, it is very unlikely that the Kentucky Cable Telecommunications Association or its members will agree to settle the dispute with Jackson Purchase Electrical Cooperative without coming to an agreement on some reasonable theory for determining what is an "unauthorized attachment" and what time period is appropriate. My views on these matters are contained in letters from me dated April 5, 2002 to Mr. Sherrill and dated August 6, 2002 to you.

I here really are three related questions here. (1) What should count as an attachment, going forward from this point? (2) What attachments should be treated as "unauthorized" and subject to a double attachment fee? (3) What period of time should be assumed for purposes of determining the unauthorized attachment fee?

In my letter to you of August 6, I suggested that you send me the back-up related to JPEC's recent pole audit. The first thing we should try to do, it seems to me, is to try to reach agreement on how many "attachments" there actually are today on JPEC's poles. I would hope that the back-up we have requested related to the audit would shed light on the number of the different types of "attachments" that were counted in the audit. As you know, we do not have the same view of what constitutes an "attachment" for purposes of pole attachment fees that JPEC does. But it would be beneficial to both parties to have a common understanding of what types of "attachments" have been counted here. It may well be that, when we see the data, we will be able to agree that there are more attachments than JPEC has been billing the cable operators for. But we will need to see the audit data to confirm that.

BRUSSELS LONDON PARIS\* BUDAPEST\* PRAGUE\* WARSAW MOSCOW TOKYO

NEW YORK BALTIMORE MCLEAN MIAMI DENVER BOULDER COLORADO SPRINGS LOS ANGELES

NYDC - 50331/0001 - 1633536 v1

\*Affiliated Office

Frank N. King, Jr.  
December 17, 2002  
Page 2

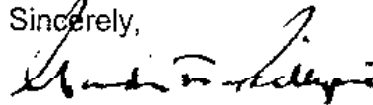
Second, to know what attachments are not "authorized," we will need a better idea of what types of attachments JPEC has historically counted as attachments for pole attachment billing purposes. If JPEC has not required that approval be obtained for a type of facility, for example, it would not be proper for JPEC to claim later that the facility is not "authorized." That is why I asked in my April 5 letter to Mr. Sherrill for the date when JPEC began to count drop poles for purposes of pole attachment billing. While we would not contest JPEC's right to count drop pole attachments as "attachments" going forward, it would not be proper to count drop pole attachments as "unauthorized" if they were made at a time when they did not need to be authorized. You should know that many utilities did not bill for drop pole attachments until recently. We need to know when JPEC first started counting drop poles for billing purposes and what, if any notification was given regarding this change in practice.

You noted on the phone that JPEC conducted a pole audit in the early to mid-1980s. It would be helpful to see what kind of attachments were counted in that audit. (In addition to the question about drop poles, I am quite certain that JPEC did not treat guys, risers, power supplies or drops that attach to the strand within 15 inches of a pole as separate attachments in that earlier audit.)

Once we have a better understanding of the facts, we will be able to make an informed decision on what might be a reasonable number of "unauthorized attachments." At that point, we can discuss with you what a reasonable time period for imposing unauthorized attachment charges might be. As you know from my two earlier letters, it is our belief that the maximum period should be two years, based on JPEC's obligation to conduct inspections of its plant every two years.

You have yet to provide us with important background facts or any clear justification for your positions regarding this matter. I hope that you will make an effort to provide such information so that we can resolve our issues.

Sincerely,



Gardner F. Gillespie

cc: Patsy Judd  
Hunt Brown, Esq.  
Ed Mount  
Greg LeMaster  
Kyle Birch, Esq.

**DORSEY, KING, GRAY & NORMENT**  
**ATTORNEYS-AT-LAW**

318 SECOND STREET

HENDERSON, KENTUCKY 42420

JOHN DORSEY (1920-1986)  
FRANK N. KING, JR.  
STEPHEN D. GRAY  
WILLIAM E. NORMENT, JR.  
J. CHRISTOPHER HOPGOOD  
S. MADISON GRAY

TELEPHONE  
(270) 826-3965  
TELEFAX  
(270) 826-6672  
www.dkgnlaw.com

January 30, 2003

Mr. Gardner F. Gillespie  
Hogan & Hartson  
Columbia Square  
555 Thirteenth Street, NW  
Washington, D.C. 20004-1109

Re: Pole Attachments Billings  
Your clients: Charter  
Communications, Comcast  
Cable of Paducah and  
Mediacom

Dear Mr. Gillespie:

Enclosed are copies of two (2) documents, one being an amendment entered into by and between Jackson Purchase Energy Corporation ("JPEC") and Galaxy Cable, Inc. ("Galaxy") and the other being a complaint that will be filed if settlement cannot be reached.

JPEC was having the same problems with Galaxy that it is experiencing with your clients. A settlement was reached and the execution of the amendment was part of that settlement. In the amendment the term "pole attachment" is defined and examples are set forth. Please note that the amendment was approved by the Kentucky Public Service Commission effective January 26, 2003.

Your December 17, 2002, letter requests the "back-up" related to JPEC's recent pole audit. Your clients have this information. Their representatives were present for the field count, agreed to what constituted a pole attachment, and received copies of the compilations. If you have checked with them and they have lost or misplaced this material, please advise and we can furnish duplicates, if necessary.

Your aforementioned letter also questions what types of attachments JPEC has historically counted as attachments for pole attachment billing purposes and asserts that if JPEC has not required approval to be obtained for a certain type of facility in the past, it would not be proper for JPEC to claim later that the facility is not "authorized." We see your point but do not agree with your conclusion. If attachments have been made to JPEC's poles and facilities, it should not matter whether the attachment falls within the strict definition of a pole attachment because clearly the offending party has benefited at JPEC's expense, and therefore JPEC has a claim against that party.

for unjust enrichment. Damages based on quantum meruit value are recoverable and the approved pole attachment rates set forth in JPEC's filed tariff provide a reasonable basis for assessing damages.

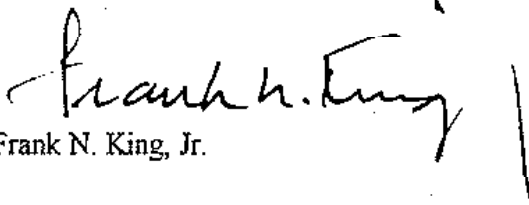
Please refer to my letter to you dated November 5, 2002. JPEC earnestly desires to avoid litigation and still will settle for those amounts (Charter Communications, \$32,500.00; Comcast Cable of Paducah, \$135,000.00; and Mediacom, \$52,500.00). In connection with such a settlement JPEC would require your respective clients to enter into an amendment in the form that accompanied my letter, which is similar to the Galaxy amendment.

We will hold off on filing suit until we see your response to this letter. If no true progress toward settlement is being made by February 15, 2003, the suit will be filed. We look forward to your response.

Very truly yours,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By

  
Frank N. King, Jr.

FNKJr/cds

Encls.

COPY: Mr. G. Kelly Nuckols

Mr. Richard T. Sherrill

## **AMENDMENT**

**THIS AMENDMENT** is made and entered into this the 27th day of December 2002, by and between **GALAXY CABLE, INC.** successor to Galaxy Cablevision Investors, 1 First National Plaza, Fourth Floor, Sikeston, Missouri 63801 (hereinafter referred to as "CATV Operator") and **JACKSON PURCHASE ENERGY CORPORATION (JPEC)**, Post Office Box 4030, Paducah, Kentucky 42002-4030 (hereinafter referred to as "Cooperative");

### **WITNESSETH:**

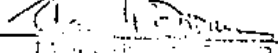
**WHEREAS**, CATV Operator's predecessor Galaxy Cablevision Investors and Cooperative entered into an agreement dated January 1, 1984, that has been assumed by CATV Operator, and under said agreement CATV Operator is permitted to make attachments to Cooperative's poles subject to compliance with all terms and conditions set forth in the tariff of Cooperative on file with the Kentucky Public Service Commission; and

**WHEREAS**, CATV Operator and Cooperative desire to agree to the general definition of a pole attachment and examples of specific items of equipment or apparatuses that constitute a pole attachment, and further desire to agree to the time and manner of conducting periodic inspections;

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JAN 26 2003

PURSUANT TO 207 KAR 5.011  
SECTION 9 (1)

BY   
EXECUTIVE SECRETARY

**NOW, THEREFORE,** in consideration of the mutual covenants and promises of the parties hereto, **IT IS AGREED** as follows:

1. (a) The term "pole attachment" as included in Cooperative's tariff shall mean any attachment by or for CATV Operator to a pole, duct, conduit, or right-of-way owned or controlled by Cooperative. Examples of a pole attachment include, but are not necessarily limited to, the following:

- \* A cable or service drop running parallel with Cooperative's facilities
- \* A cable dead-ended on Cooperative's pole
- \* Overhead or down guy if attached to the pole at an elevation different from the cable being supported
- \* Service drop if attached to the joint user cable within 15 inches of the pole or if it otherwise passes into the climbing space
- \* Underground riser
- \* Equipment closer

(If service drop from underground system rises up Cooperative's pole and proceeds overhead to a single customer, this will constitute one pole attachment.)

(b) CATV Operator acknowledges that there may be and often will be more than one attachment per pole.

2. Periodic inspections referred to in Cooperative's tariff shall be conducted at least every five (5) years. Prior to such inspection CATV Operator shall be notified in writing at least 30 days in advance and shall be afforded an opportunity to have a representative present during the inspection. Each party shall pay its own expenses.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JAN 26 2003

3. This Amendment shall become effective upon its approval or acceptance by the Kentucky Public Service Commission.

4. In all other respects the terms and conditions of the aforementioned agreement between the parties are confirmed and ratified.

**IN TESTIMONY WHEREOF**, witness the hands of the parties hereto by and through their duly authorized representatives this day and date first above written.

**GALAXY CABLE, INC.**

By: Ward P. Webb  
WARD P. WEBB  
(printed name)

Title: V.P. Engineering

**JACKSON PURCHASE ENERGY CORPORATION**

By: G. Kelly Nichols by [Signature]  
G. Kelly Nichols  
(printed name)

Title: President & CEO

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JAN 26 2003



C64-0084

**DORSEY, KING, GRAY & NORMENT**  
**ATTORNEYS-AT-LAW**

314 SECOND STREET

HENDERSON, KENTUCKY 42420

JOHN DORSEY (1922-1988)  
FRANK N. KING, JR.  
STEPHEN D. GRAY  
WILLIAM D. NORMENT, JR.  
J. CHRISTOPHER HOPGOOD  
S. MADISON GRAYTELEPHONE  
(270) 828-3885  
TELEFAX  
(270) 828-4878  
www.dkgllp.com

January 15, 2003

Mr. Thomas M. Dorman  
Executive Director  
Public Service Commission of Kentucky  
211 Sower Boulevard  
Frankfort, Kentucky 40601RECEIVED  
JAN 21 2003  
PUBLIC SERVICE  
COMMISSIONRe: Jackson Purchase Energy Corporation  
Amendment to Pole Attachment Agreement

Dear Mr. Dorman:

Jackson Purchase Energy Corporation has entered into an amendment of its pole attachment agreement with Galaxy Cable, Inc., successor to Galaxy Cablevision Investors. Enclosed herewith for acceptance by the Commission please find the original and one copy of said amendment.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY, NORMENT &amp; HOPGOOD

By

  
Frank N. King, Jr.FNEJr/cds  
Encls.COPY/w/o/encls.: Mr. Kelly Nuckols  
Mr. Rich Sherrell

**AMENDMENT**

**THIS AMENDMENT** is made and entered into this the 27th day of December 2002, by and between **GALAXY CABLE, INC.** successor to Galaxy Cablevision Investors, 1 First National Plaza, Fourth Floor, St. Louis, Missouri 63801 (hereinafter referred to as "CATV Operator") and **JACKSON PURCHASE ENERGY CORPORATION (JPEC)**, Post Office Box 4030, Paducah, Kentucky 42002-4030 (hereinafter referred to as "Cooperative");

**WITNESSETH:**

**WHEREAS**, CATV Operator's predecessor Galaxy Cablevision Investors and Cooperative entered into an agreement dated January 1, 1984, that has been assumed by CATV Operator, and under said agreement CATV Operator is permitted to make attachments to Cooperative's poles subject to compliance with all terms and conditions set forth in the tariff of Cooperative on file with the Kentucky Public Service Commission; and

**WHEREAS**, CATV Operator and Cooperative desire to agree to the general definition of a pole attachment and examples of specific items of equipment or apparatuses that constitute a pole attachment, and further desire to agree to the time and manner of conducting periodic inspections;

**NOW, THEREFORE**, in consideration of the mutual covenants and promises of the parties hereto, **IT IS AGREED** as follows:

1. (a) The term "pole attachment" as included in Cooperative's tariff shall mean any attachment by or for CATV Operator to a pole, duct, conduit, or right-of-way owned or controlled by Cooperative. Examples of a pole attachment include, but are not necessarily limited to, the following:

- \* A cable or service drop running parallel with Cooperative's facilities
- \* A cable dead-ended on Cooperative's pole
- \* Overhead or down guy if attached to the pole at an elevation different from the cable being supported
- \* Service drop if attached to the joint user cable within 15 inches of the pole or if it otherwise passes into the climbing space
- \* Underground riser
- \* Equipment closer

(If service drop from underground system rises up Cooperative's pole and proceeds overhead to a single customer, this will constitute one pole attachment.)

(b) CATV Operator acknowledges that there may be and often will be more than one attachment per pole.

2. Periodic inspections referred to in Cooperative's tariff shall be conducted at least every five (5) years. Prior to such inspection CATV Operator shall be notified in writing at least 30 days in advance and shall be afforded an opportunity to have a representative present during the inspection. Each party shall pay its own expenses.

3. This Amendment shall become effective upon its approval or acceptance by the Kentucky Public Service Commission.

4. In all other respects the terms and conditions of the aforementioned agreement between the parties are confirmed and ratified.

**IN TESTIMONY WHEREOF**, witness the hands of the parties hereto by and through their duly authorized representatives this day and date first above written.

**GALAXY CABLE, INC.**

By: \_\_\_\_\_

*Ward P. Webb*

WARD P. WEBB

(printed name)

Title: \_\_\_\_\_

*V.P. Engineering*

**JACKSON PURCHASE ENERGY CORPORATION**

By: \_\_\_\_\_

*G. Kelly Nichols*

G. Kelly Nichols

(printed name)

Title: \_\_\_\_\_

*President & CEO*

MAR-27-2002 11:48

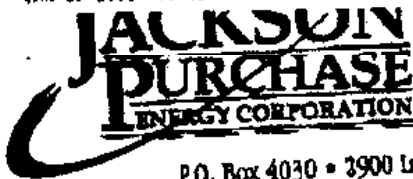
FROM: CHARTER COMMUNICATIONS

+270 753 8482

T-182

P.006/006

F-193



P.O. Box 4030 • 3900 Irvin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

February 27, 2002

Charter Communications  
Attn: John Hudak  
906 S. 12<sup>th</sup> Street  
Murray, KY 42071

Re: Joint Pole Attachment Billing

Dear Mr. Hudak:

We are enclosing our invoice for the Joint Pole Attachment billing for 2002. The amount of \$54,738.22 is based upon the field attachment count just completed and includes a penalty billing of \$51,816.48 for unauthorized attachments discovered during the count.

We are also attaching an explanation of how the penalty billing was calculated.

This invoice is due in full, on or before March 15, 2002. If not paid by that date, an additional 5% will be added in accordance with the CATV tariff, under which Charter Communications is allowed to attach to our poles.

If you have any questions or need additional information please call me.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Rick T. Sherrill'.

Richard T. Sherrill  
Vice-President of Distribution and Engineering

Jf

CC: Penelope Thorne



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MAR-27-2002 11:47 FROM-CHARTER COMMUNICATIONS

+270 753 8402

T-102 P.003/008 F-035



P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

February 26, 2002

Billing for 2002

Charter Communications  
Attn: John Hudak  
906 S. 12th St.  
Murray, KY 42071

1-270-753-5581 ext 113

JPEC	Description	Number	Cost	Total Cost
143.000	2002 two-party cable attachments: 2002 three-party cable attachments  Penalty for unauthorized attachments discovered in 2002 field count (see attached for breakdown and explanations)	1,062 202	\$2.27 \$1.75	\$2,410.74 \$511.00  \$51,818.48
	2002 JPEC attachments to Charter Comm:	0	\$0.00	\$0.00
	Total Amount Due:			\$54,730.22

PLEASE KEEP THIS SHEET FOR YOUR RECORDS. THANK YOU.



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MAR-27-2002 11:48

FROM-CHARTER COMMUNICATIONS

+170 753 1482

T-102 P.004/008 F-035

FEBRUARY 25, 2002

CHARTER COMMUNICATIONS, INC  
CALCULATION  
OF  
PENALTY BILLING  
FOR  
UNAUTHORIZED ATTACHMENTS

Total 2 Party attachments from 2002 Field Count .....	1062
Less 2 Party attachments carried from 2001 Billing .....	(336)
Net unauthorized 2 Party attachments .....	726
Total 3 Party attachments from 2002 Field Count .....	292
Less 3 Party attachments carried from 2001 Billing .....	0
Net unauthorized 3 Party attachments .....	292

The Penalty rate for unauthorized attachments is based on the CATV tariff, Paragraph A under *Inspections* on Page 10.4. This states that "... Any unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the last previously required inspection." We find no records indicating that an inspection has been performed since at least 1984. However, we have chosen 1990 as the beginning year for penalty assessment as the 1989 billing indicates the identical number of attachments as the 2001 billing indicating that the CATV operator has not informed JPEC of any new attachments since that time. Based upon this, the penalty amount per unauthorized attachment would be:

2 Party:	\$2.27 (base per attachment) x 12 (number of years 1990 - 2001) x 2 (per above clause) = \$54.48
3 Party:	same as above except using \$1.75 as base per attachment = \$42.00

**PENALTY BILLING:**

2 Party:	\$54.48 x 726 = \$39,552.48
3 Party:	\$42.00 x 292 = \$12,264.00
<b>Total Penalty</b>	<b>\$ 51,816.48</b>

MAR-27-2002 11:40

FROM-CHARTER COMMUNICATIONS

+270 789 8492

T-182 P.006/006 F-033

Jackson Purchase Energy  
Pole Attachment Billing 2002

## 2002 Attachments:

## Two-Party Attachments:

Number	Cost/Attachment	Total Cost
1062	\$2.27	\$2,410.74

## Three-Party Attachments:

Number	Cost/Attachment	Total Cost
292	\$1.75	\$511.00

Total Billing 2002 Attachments: \$2,921.74

## Penalty Billing Unauthorized Attachments:

## Two-Party Attachments:

Number	Cost/Attachment	Total Cost
726	\$9.08	\$6,592.08

## Three-Party Attachments

Number	Cost/Attachment	Total Cost
292	\$7.00	\$2,044.00

Total Penalty Billing: \$8,636.08

Approved Total Payment To Jackson Purchase Energy: \$11,557.82

## Remit to:

Jackson Purchase Energy Corporation  
P.O. Box 4030  
2900 Irvin Cobb Drive  
Paducah, Kentucky 42002-4030



APR-04-2002 09:46 FROM-CHARTER COMMUNICATIONS

+270 759 8462

T-224 P.002/002 F-176



P.O. Box 4030 • 2900 Irwin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

Fax 412-5337

March 26, 2002

Mr. Dale Haney  
Charter Communications  
906 S. 12<sup>th</sup> St.  
Murray, KY 42071

Re: Jackson Purchase Invoice Dated 2/26/2002

Dear Mr. Haney:

This is to acknowledge receipt of your partial payment of \$11,557.82 toward the above referenced invoice. Unfortunately, we did not receive any explanation as to why you made partial rather than full payment. We would appreciate any information you can provide regarding this.

Please be advised that the remaining amounts owed have been increased by 5% per the tariff, due to late payment. The total now owed is \$45,339.42 and is due immediately. If we have not received the remaining balance on this account by close of business on April 5, 2002, we will have no choice but to begin proceedings to deny Charter Communications the right to attach to our poles.

In addition, the tariff requires the posting of a Payment Bond equal to \$25,000 plus \$1,000 for each 100 poles or fraction thereof above 2300. Please arrange for this Bond to be posted immediately. Also, please arrange for a current copy of your Certificate of Insurance, as required by the tariff, to be forwarded.

Should you have any questions relating to the above, please contact us.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. Sherrill", is written over a horizontal line.

Richard T. Sherrill, PE  
Vice President - Distribution & Engineering

CC: G. Kelly Nuckols  
Penelope Overton



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MAR 29 2002 11:24AM MEDLACOM BENTON, KY

NO. 006 P.2



P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

March 6, 2002

Mediacom  
Attn: Scotty Power  
90 Main Street  
Benton, KY 42025

Re: Joint Pole Attachment Billing

Dear Mr. Power:

We are enclosing a statement for the Joint Pole Attachment billing for 2002. The amount of \$105,226.29 is based upon the field attachment count just completed and includes a penalty billing of \$98,355.88 for unauthorized attachments discovered during the count.

We are also attaching an explanation of how the penalty billing was calculated.

This invoice is due in full, on or before March 22, 2002. If not paid by that date, an additional 5% will be added in accordance with the CATV tariff, under which Mediacom is allowed to attach to our poles.

If you have any questions or need additional information please call me.

Yours truly,

A handwritten signature in dark ink, appearing to read "Richard T. Sherrill".

(270) 441-0856 Direct

Richard T. Sherrill  
Vice-President of Distribution and Engineering

JR

CC: Penelope Overton



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MAR. 29. 2002 11:04AM MEDIACOM BENTON, KY

NO. 896 P.3



P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

March 6, 2002

Billing for 2002

Attn: Scotty Power  
Accounts Payable  
Mediacom  
90 Main St.  
Benton, Ky. 42026

270-527-9939

JPEC	Description	Number	Cost	Total Cost
143.000	2002 Mediacom attachments to JPEC:			
	2 Party:	1,153	\$2.27	\$2,817.31
	3 Party:	1,968	\$1.75	\$3,444.00
	Mediacom guy attachments to JPEC:			
	2 Party:	281	\$3.10	\$809.10
	3 Party:	0	\$0.00	\$0.00
	Penalty for unauthorized attachments discovered in 2002 field count (see attached for breakdown and explanations)			\$98,355.68
	Subtotal:			\$105,226.29
	2002 JPEC attachments to Mediacom:	0	\$0.00	\$0.00
	Subtotal:			\$0.00
	Total Amount Due:			\$105,226.29

PLEASE KEEP THIS SHEET FOR YOUR RECORDS. THANK YOU.



A Touchstone Energy® Partner

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MAR.29.2002 11:04AM MEDIACOM BENTON, KY

NO.896 P.4

MARCH 6, 2002

MEDIACOM CATV  
CALCULATION  
OF  
PENALTY BILLING  
FOR  
UNAUTHORIZED ATTACHMENTS

The total number of Mediacom attachments to JPEC poles per the attachment count completed 2/26/02 is 3382, a difference of 1784 from the 2001 billing. A penalty billing is due JPEC for these 1784 attachments that are unauthorized.

Total 2 Party attachments from 2002 Field Count .....	1153
Less 2 Party attachments carried from 2001 Billing .....	(965)
Net unauthorized 2 Party attachments .....	188
Total 3 Party attachments from 2002 Field Count .....	1968
Less 3 Party attachments carried from 2001 Billing .....	589
Net unauthorized 3 Party attachments .....	1379
Total 2 Party anchor attachments from 2002 Field Count .....	261
Less 2 Party anchor attachments carried from 2001 Billing ....	44
Net unauthorized 2 Party anchor attachments .....	217

The Penalty rate for unauthorized attachments is based on the CATV tariff, Paragraph A under *Inspections* on Page 10.4. This states that "... Any unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the last previously required inspection." We find no records indicating that an inspection has been performed since at least 1987. However, we have chosen 1988 as the beginning year for penalty assessment as the total number of attachments on that bill equaled 1582, only 16 less than the total on the 2001 billing (these 16 were reported in 1994). By contrast, the CATV operator acknowledged 179 new attachments in 1987. This indicates to us that MediaCom and its predecessors have not made a serious attempt to follow the tariff requirements since 1988.

Therefore, the penalty amount per unauthorized attachment would be:

3 Party:	\$2.27 (base per attachment) x 14 (number of years 1988 - 2001) x 2 (per above clause)	= \$63.56
3 Party:	same as above except using \$1.75 as base per attachment	= \$49.00
2 Party:	same as above except using \$3.10 as base per attachment	= \$86.80
Anchor:		

**PENALTY BILLING:**

2 Party:	\$63.56 x 188	= \$11,949.28
3 Party:	\$49.00 x 1379	= \$67,571.00
2 Party Anchor:	\$86.80 x 217	= \$18,835.60
Total Penalty		<b>\$98,355.88</b>



P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

March 20, 2002

Comcast Cable of Paducah  
Attn: Dennis Graham  
P O Box 2700  
Paducah, KY 42002-2700

Re: Joint Pole Attachment Billing

Dear Mr. Graham:

We are enclosing a statement for the Joint Pole Attachment billing for 2002. This is marked 'preliminary' in accordance with previous discussions between Ed Mount and G. Kelly Nuckols. However, we do not anticipate further charges as of this date. The amount of \$234,034.00 is based upon the field attachment count just completed and includes a penalty billing of \$216,058.08 for unauthorized attachments discovered during the count.

We are also attaching an explanation of how the penalty billing was calculated.

This invoice is due in full, on or before April 19, 2002. If not paid by that date, an additional 5% will be added in accordance with the CATV tariff, under which Comcast is allowed to attach to our poles.

If you have any questions or need additional information please call me.

Yours truly,

A handwritten signature in dark ink, appearing to read "R. T. Sherrill", is written over a light-colored background.

Richard T. Sherrill  
Vice-President of Distribution and Engineering

Jf

CC: Penelope Overton



# JACKSON PURCHASE ENERGY CORPORATION

RECEIVED

P.O. Box 4030 • 2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

• 270/442-7321 • 800/633-4044

March 15, 2002

Billing for 2 102

Attn: Dennis Graham  
Comcast Cable of Paducah  
P.O. Box 2700  
Paducah, Ky. 42002-2700

270-442-8144

JPEC	Description	Number	Cost	Total Cos
143.000	2002 Comcast attachments to JPEC: Livingston County: 2 Party: 3 Party: McCracken County: 2 Party: 3 Party:  Penalty for unauthorized attachments discovered in 2002 field count (see attached for breakdown and explanations) Subtotal:	  694 342  5052 2488	  \$2.27 \$1.75  \$2.27 \$1.75	  \$1,571.38 \$561.50  \$11,461.04 \$4,361.00  \$216,001.08 \$234,001.00
	2002 JPEC attachments to Comcast:	0	\$0.00	11.00
	Total Amount Due:			\$234,012.00

PLEASE RETURN THIS SHEET WITH YOUR PAYMENT. THANK YOU.

Your Cooperative Partner by Choice



MARCH 15, 2002

COMCAST CATV  
CALCULATION  
OF  
PENALTY BILLING  
FOR  
UNAUTHORIZED ATTACHMENTS

The total number of Comcast attachments to IPEC poles per the attachment count completed 2/26/02 is 8571 a difference of 4308 from the 2001 billing. A penalty billing is due IPEC for these 4308 attachments that are unauthorized.

Based on a sample of 38% of all poles on which Comcast has one or more attachments, one third (33%) of a Comcast attachments will be considered 3 Party attachments.

Total 2 Party attachments from 2002 Field Count .....	5746
Less 2 Party attachments carried from 2001 Billing .....	(2925)
Net unauthorized 2 Party attachments .....	2821
Total 3 Party attachments from 2002 Field Count .....	2830
Less 3 Party attachments carried from 2001 Billing .....	1345
Net unauthorized 3 Party attachments .....	1485

The Penalty rate for unauthorized attachments is based on the CATV tariff, Paragraph A under *Inspections* on Page 10.4. This states that "... Any unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the last previously required inspection."

We find no records indicating when, if ever, a system wide inspection (count) was last performed. We assure, however, that one was performed in conjunction with the execution of the last Pole Attachment Agreement, dated 1/1/1984, and implementing the CATV tariff currently in place.

However, we have chosen 1990 as the beginning year for penalty assessment primarily as a good faith attempt to reach a quick resolution for this matter. We will review, at Comcast's expense, any records that they wish to submit to show that this chosen penalty period to be unreasonable and will promptly reimburse any overcharges resulting from this review.

Based upon this, the penalty amount per unauthorized attachment would be:

2 Party:	$\$2.27$ (base per attachment) $\times$ 12 (number of years 1990 - 2001) $\times$ 2 (per above clause) = $\$54.48$
3 Party:	same as above except using $\$1.75$ as base per attachment = $\$42.00$

**PENALTY BILLING:**

2 Party:	$\$54.48 \times 2821 = \$153,688.08$
3 Party:	$\$42.00 \times 1485 = \$62,370.00$
Total Penalty	<b><math>\\$216,058.08</math></b>



Comcast Cable Communications, Inc.  
1500 Market Street  
Philadelphia, PA 19102-2448

April 3, 2002

**VIA OVERNIGHT DELIVERY**

Mr. Richard T. Sherrill  
Vice-President of Distribution and Engineering  
Jackson Purchase Corporation  
P.O. Box 4030  
2900 Irvin Cobb Drive  
Paducah, KY 42002-4030

**RE: Joint Pole Attachment Billing**

Dear Mr. Sherrill:

A copy of your letter of March 20, 2002, together with invoices totaling \$234,034.00, for pole attachment fees, has been forwarded to me. As you know, Comcast disputes many of Jackson Energy's charges, as well as the assumptions and methodologies underlying those charges.

Jackson Energy has apparently assessed unauthorized attachment fees based upon its recent audit, which purportedly found 4,306 attachments over and above the number of attachments reflected in the previous audit. The Comcast personnel who accompanied Jackson Energy during the audit, disagree with Jackson's conclusions as to at least 1,290 of the additional attachments claimed by Jackson. Moreover, Comcast is currently reviewing its applications filed with Jackson Energy, to determine if applications were submitted for any of the attachments cited in Jackson Energy's audit.

While it appears that Jackson may bill for unauthorized attachments at double the rate that would otherwise be due at the time of the previous inspection, Comcast strongly disagrees with Jackson Energy's attempt to bill retroactively for twelve (12) years. Nothing in applicable Kentucky Public Service Commission rules or decisions permit Jackson to do so. Indeed, under the Commission's regulations, utilities are required to inspect their systems for hazards and safety issues every two (2) years. Had Jackson Energy conducted its pole audit during those required inspections, Comcast would no doubt agree to the two-year period such an audit would have indicated. In any event, Comcast would still agree to a two-year period, subject to Comcast's right to establish a



Mr. Richard T. Sherrill  
April 3, 2002  
Page 2 of 2

shorter period in instances where the actual date of attachment may be reasonably documented.

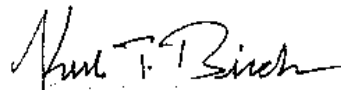
With the above said, Comcast will, of course, pay the undisputed amount of Jackson Energy's invoice. Comcast estimates that it currently owes \$15,288.62 for attachment fees for the period of January 01, 2002 through December 31, 2002. Comcast will forward that amount to Jackson Energy under separate cover. Comcast's agreement to pay said \$15,288.62 is without waiver of any rights, defenses or objections Comcast may have.

With respect to the additional attachments under Jackson's current invoice, Comcast must insist upon an accurate determination. I am therefore requesting that you provide to Comcast, (through Mr. Ed Mount), back-up documentation to Jackson's invoice, showing the locations and nature of the claimed unauthorized attachments, together with the number of other attachers to the poles which are the subject of such attachments.

Comcast hopes to amicably and expeditiously resolve the present dispute. Toward that end, I suggest that, once Comcast has an opportunity to review the supplemental documentation we have requested, the parties meet to discuss any outstanding issues.

I look forward to hearing from you.

Very truly yours,



Kyle T. Birch  
Assistant Deputy General Counsel

cc: Ed Mount

bcc: Gardner Gillespie ✓



P.O. Box 3188 • 2900 Irvin Cobb Drive • Paducah, KY 42002-3188 • 270/442-7321 • 800/633-4044

February 16, 2001

Billing for 2001

Kevin Goetz  
Falcon Cable TV  
P.O. Box 983  
Sikeston, Mo. 63801

800-233-5815

JPEC	Description	Number	Cost	Total Cost
143.000	2001 Falcon Cable attachments to JPEC:	336	\$2.27	\$762.72
	2001 JPEC attachments to Falcon Cable:	0	\$0.00	\$0.00
	Total Amount Due:			\$762.72



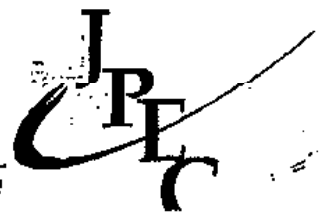
**PAID**

3/18/01

#750

PLEASE RETURN THIS SHEET WITH YOUR PAYMENT. THANK YOU.

*Del*  
3-9-01



Your Cooperative Partner by Choice

RECEIVED FEB 22 2001



P.O. Box 3188 • 2900 Irvin Cobb Drive • Paducah, KY 42002-3188 • 502/442-7321 • 800/633-4044

February 18, 2001

Billing for 2001

Keith Davis  
Comcast Cable of Paducah  
P.O. Box 2700  
Paducah, Ky. 42002-2700

270-442-8144

JPEC	Description	Number	Cost	Total Cost
143.000	2001 Comcast attachments to JPEC: Livingston County: 2 Party: 3 Party: McCracken County: 2 Party: 3 Party:  Subtotal:	  401 172  2524 1173  3697	  \$2.27 \$1.75  \$2.27 \$1.75  4.23	  \$910.27 \$301.00  \$5,728.48 \$2,052.75  \$8,993.50
	2001 JPEC attachments to Comcast:	0	\$0.00	\$0.00
VOUCHER # _____ BATCH # _____ VENDOR # _____ PO NUMBER _____ INVOICE # 8993.50 MGR. APPR. _____ A/C # 015-13505-000 DIST. AMT. \$ 8993.50 A/C # _____ DIST. AMT. \$ _____ A/C # _____ DIST. AMT. \$ _____ A/C # _____ DIST. AMT. \$ _____ ADD # _____ DIST. AMT. \$ _____ NEWSPR AVERT BY _____ KEY PUNCHED BY _____				
	Total Amount Due:			FEB 23 2001 \$8,993.50

PLEASE RETURN THIS SHEET WITH YOUR PAYMENT. THANK YOU.



P.O. Box 3188 • 2900 Irvin Cobb Drive • Paducah, KY 42002-3188 • 270/442-7321 • 800/633-4044

February 16, 2001

Billing for 2001

Attn: Scotty  
Mediacom  
90 North Main St.  
Benton, Ky. 42025

270-527-9939

JPEC	Description	Number	Cost	Total Cost
143.000	2001 Mediacom attachments to JPEC:			
	2 Party:	985	\$2.27	\$2,190.55
	3 Party:	589	\$1.75	\$1,030.75
	Mediacom guy attachments to JPEC:			
	2 Party:	44	\$3.10	\$136.40
	3 Party:	0	\$0.00	\$0.00
	Subtotal:			\$3,357.70
	2001 JPEC attachments to Mediacom:	0	\$0.00	\$0.00
	Subtotal:			\$0.00
	Total Amount Due:			\$3,357.70

PLEASE KEEP THIS SHEET FOR YOUR RECORDS. THANK YOU.

FEB 22 2001

AP DEPT.

A "Thunderbolt Energy" Partner

Your Cooperative Partner by Choice  
Visit our Web Page at [www.JPEnergy.com](http://www.JPEnergy.com)



AGREEMENT FOR JOINT USE OF ELECTRIC SYSTEM  
POLES FOR TELEVISION ANTENNA SERVICE ATTACHMENTS

THIS AGREEMENT, made and entered into this 1st day of January, 1984, by and between COMCAST CABLE OF PADUCAH (hereinafter called the "CATV Operator") and JACKSON PURCHASE ELECTRIC COOPERATIVE CORPORATION (hereinafter called the "Cooperative"), a corporation organized under the laws of the State of Kentucky.

WHEREAS, CATV Operator proposes to furnish television antenna service to residents located in the service area of the Cooperative in Western Kentucky and will need to erect and maintain aerial cables, wires and associated facilities throughout the area to be served and desires to attach such cables, wires and facilities to poles of the Cooperative; and

WHEREAS, the Cooperative is willing to permit, to the extent it may lawfully do so, the attachment of said cables, wires and facilities to its poles, where, in a safe manner with regard to the safety of the employees of the Cooperative as well as the general public, such use will not interfere with its own service requirements and with the rights or privileges of other parties using the Cooperative's poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

1. That the CATV Operator shall be permitted to jointly use the poles of the Cooperative subject to compliance with all of the terms and conditions set forth in the tariff of the Cooperative on file with the Kentucky Public Service Commission pursuant to Administrative Case No. 251-41.
2. That by the execution of this agreement the parties covenant that they will comply with all terms and conditions set forth in said tariff and any future amendments or changes permitted by the Kentucky Public Service Commission, and CATV Operator agrees that it will promptly pay all fees set forth in said tariff.
3. A copy of the Cooperative's tariff is attached hereto and labeled Exhibit "A" and is further incorporated by reference herein.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed.

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

BY: John F. Ferguson  
John F. Ferguson, General Manager

ATTEST:

Sandra Gouley

COMCAST CABLE OF PADUCAH

BY: [Signature]

ATTEST:

Grace M. Liguori

## Form for Filing Rate Schedules

For Entire Territory Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

Original

SHEET NO. 10.1

Jackson Purchase E.C.C.

Name of Issuing Corporation

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

B. The strength of poles covered by this agreement shall be sufficient to withstand the transverse and vertical load imposed upon them under the storm loading of the National Electrical Safety Code assumed for the area in which they are located.

## ESTABLISHING POLE USE:

A. Before the CATV operators shall make use of any of the poles of the Cooperative under this tariff, they shall notify the Cooperative of their intent in writing and shall comply with the procedures established by the Cooperative. The CATV operator shall furnish the Cooperative detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Cooperative, with the number and character of the attachments to be placed on such poles, and rearrangements of the Cooperative's fixtures and equipment necessary for the attachment, any relocation or replacements of existing poles, and any additional poles that CATV intends to install.

The Cooperative shall, on the basis of such detailed construction plans and drawings, submit to the CATV operators a cost estimate (including overhead and less salvage value of materials) of all changes that may be required in each such pole line. Upon written notice by the CATV operators to the Cooperative that the cost estimate is approved, the Cooperative shall proceed with the necessary changes in pole lines covered by cost estimate. Upon completion of all changes, the CATV operators shall have the right hereunder to make attachments in accordance with the terms of the application of this tariff. The CATV operators shall, at their own expense, make attachments in such manner as not to interfere with the service of the Cooperative.

B. Upon completion of all changes, the CATV operators shall pay to the Cooperative the actual cost (including overhead and less salvage value of materials) of making such changes. The obligations of the CATV operators

DATE OF ISSUE \_\_\_\_\_

DATE EFFECTIVE \_\_\_\_\_

ISSUED BY \_\_\_\_\_

John F. Ferguson  
Name of Officer

TITLE \_\_\_\_\_

General Manager



## Form for filing Rate Schedules

For Entire Territory Served

Community, Town or City

P.S.C. NO.

Original

SHFET NO. 10.0

Jackson Purchase E.C.C.

CANCELLING E.R.C. NO.

Name of Issuing Corporation

SHEET NO.

## CLASSIFICATION OF SERVICE

RATE  
PER UNIT

CTAT (Cable Television Attachment Tariff)

APPLICABILITY:

In all territory served by the company on poles owned and used by the company for their electric plant.

AVAILABILITY:

To all qualified CATV operators having the right to receive service.

RENTAL CHARGE:

The yearly rental charges shall be as follows:

Two-party pole attachment	\$2.27
Three-party pole attachment	\$1.75
Two-party anchor attachment	\$3.10
Three-party anchor attachment	\$2.07
Grounding Attachment	-0-
Pedestal Attachment	-0-

BILLING:

Rental charges shall be billed yearly based on the number of pole attachments. The rental charges are net, the gross rate being five percent (5%) higher. In the event the current bill is not paid on or before the date shown on the bill, the gross rates shall apply. Failure of the CATV operator to receive a bill or a correctly calculated bill shall not relieve the CATV operator of its obligation to pay for the service it has received.

SPECIFICATIONS:

A. The attachment to poles covered by this tariff shall at all times conform to the requirements of the National Electrical Safety Code, 1981 Edition, and subsequent revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

DATE OF ISSUE

DATE EFFECTIVE

ISSUED BY

TITLE

General Manager

Name of Officer

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

## Form for Filing Rate Schedules

For Entire Territory Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

OriginalSHEET NO. 10.2

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

Jackson Purchase E.C.C.  
Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

hereunder shall not be limited to amounts shown on estimates made by the Cooperative hereunder. An itemized statement of the actual cost of all such changes shall be submitted by the Cooperative to the CATV operators, in a form mutually agreed upon.

C. Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of pole line attachments hereunder shall be performed by the CATV operators.

D. All poles to which attachments have been made under this tariff shall remain the property of the Cooperative, and any payments made by the CATV operators for changes in pole line under this tariff shall not entitle the CATV operator to the ownership of any of said poles.

E. Any charges necessary for correction of substandard installation made by the CATV operators, where notice of intent had not been requested, shall be filled at rate equal to twice the charges that would have been imposed if the attachment had been properly authorized.

EASEMENTS AND RIGHTS-OF-WAY:

A. The Cooperative does not warrant nor assure to the CATV operators any rights-of-way privileges or easements, and if the CATV operators shall at any time be prevented from placing or maintaining its attachments on the Cooperative's poles, no liability on account thereof shall attach to the Cooperative. Each party shall be responsible for obtaining its own easements and rights-of-way.

MAINTENANCE OF POLES, ATTACHMENTS AND OPERATION:

A. Whenever right-of-way considerations or public regulations make relocation of a pole, or poles, necessary, such relocation shall be made by the Cooperative at its own expense, except that each party shall bear the cost of transferring its own attachments.

DATE OF ISSUE \_\_\_\_\_

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ISSUED BY \_\_\_\_\_

TITLE \_\_\_\_\_

Name of Officer

General Manager

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

Form for Filing Rate Schedules

For Entire Territory ServedCommunity, Town or City

P.S.C. NO. \_\_\_\_\_

OriginalSHEET NO. 10.3

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

Jackson Purchase E.C.C.

Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

RATE  
PER UNIT

CTAT (Cable Television Attachment Tariff)

B. Whenever it is necessary to replace or relocate an attachment, the Cooperative shall, before making such replacement or relocation, give forty-eight (48) hours notice (except in cases of emergency) to the CATV operators, specifying in said notice the time of such proposed replacement or relocation, and the CATV operators shall, at the time so specified, transfer its attachments to the new or relocated pole. Should the CATV operators fail to transfer its attachments to the new or relocated pole at the time specified for such transfer of attachments, the Cooperative may elect to do such work and the CATV operators shall pay the Cooperative the cost thereof. In the event the CATV operators fail to transfer its attachments and the Cooperative does such work, the Cooperative shall not be liable for any consequential damages such as loss of service to CATV customers.

C. Any existing attachment of CATV which does not conform to the specifications as set out in this tariff hereof shall be brought into conformity therewith as soon as practical. The Cooperative, because of the importance of its service, reserves the right to inspect each new installation of the CATV operator on its poles and in the vicinity of its lines or appurtenances. Such inspection, made or not, shall not operate to relieve the CATV operators of any responsibility, obligations or liability assumed under the tariff.

D. The Cooperative reserves to itself, its successor and assigns, the right to maintain its poles and operate its facilities thereon in such manner as will, in its own judgment, best enable it to fulfill its own service requirements. The Cooperative shall not be liable to the CATV operators for any interruption of service of CATV operator or for interference with the operation of the cables, wires and appliances of the CATV operators arising in any manner out of the use of the Cooperative's poles hereunder.

The Cooperative shall exercise reasonable care to avoid damaging the facilities of the CATV operator, make an immediate report to the CATV

DATE OF ISSUE \_\_\_\_\_

DATE EFFECTIVE \_\_\_\_\_

ISSUED BY \_\_\_\_\_

TITLE \_\_\_\_\_

Name of Officer

General Manager

OFFICE OF THE ENERGY REGULATORY COMMISSION OF KENTUCKY in

Form for Filing Rate Schedules

For Entire Territory Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

Original

SHEET NO. 10.4

Jackson Purchase E.C.C.

Name of Issuing Corporation

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

## CLASSIFICATION OF SERVICE

RATE  
PER UNIT

CTAT (Cable Television Attachment Tariff)

operator of the occurrence of any such damage caused by its employees, agents or contractors, and, except for removal for non-payment or for failure to post or maintain the required "Performance Bond", agrees to reimburse the CATV operator for all reasonable cost incurred by the CATV operator for the physical repair of facilities damaged by the negligence of the Cooperative.

INSPECTIONS:

A. Periodic Inspection: Any unauthorized or unreported attachment by CATV operator will be billed at a rate of two times the amount equal to the rate that would have been due, had the installation been made the day after the last previously required inspection.

B. Make-Ready Inspection: Any "make-ready" inspection or "walk-through" inspection required of the Cooperative will be paid for by the CATV operators at a rate equal to the Cooperative's actual expenses, plus appropriate overhead charges.

INSURANCE OR BOND:

A. The CATV operator agrees to defend, indemnify and save harmless the Cooperative from any and all damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same and payment of any settlement or judgment therefor, by reason of (a) injuries or deaths to persons, (b) damages to or destruction of properties, (c) pollutions, contaminations of or other adverse effects on the environment or (d) violations of governmental laws, regulations or orders whether suffered directly by the Cooperative itself, or indirectly by reason of claims, demands or suits against it by third parties, resulting or alleged to have resulted from acts or omissions of the CATV operator, its employees, agents or other representatives or from their presence on the premises of the Cooperative, either solely or in concurrence with any alleged joint

DATE OF ISSUE \_\_\_\_\_

DATE EFFECTIVE \_\_\_\_\_

ISSUED BY \_\_\_\_\_

TITLE General Manager

Name of Officer

Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

Form for Filing Rate Schedules

Community, Town or City

P.S.C. NO. \_\_\_\_\_

Original

SHEET NO. 10.5

Jackson Purchase E.C.C.

CANCELLING E.R.C. NO. \_\_\_\_\_

Name of Issuing Corporation

SHEET NO. \_\_\_\_\_

## CLASSIFICATION OF SERVICE

RATE  
PER UNIT

CTAT (Cable Television Attachment Tariff)

negligence of the Cooperative. The Cooperative shall be liable for sole active negligence.

B. The CATV operators will provide coverage from a company authorized to do business in the Commonwealth of Kentucky:

1. Protection for its employees to the extent required by Worker's Compensation Law of Kentucky.
2. Public liability coverage with separate coverage for each town or city in which the CATV operators operate under this contract to a minimum amount of \$100,000.00 for each person and \$300,000.00 for each accident or personal injury or death, and \$25,000.00 as to the property of any one person, and \$100,000.00 as to any one accident of property damage.

Before beginning operations under this tariff, the CATV operators shall cause to be furnished to the Cooperative a certificate for such coverage, evidencing the existence of such coverage. Each policy required hereunder shall contain a contractual endorsement written as follows:

"The insurance or bond provided herein shall also be for the benefit of Jackson Purchase Electric Cooperative Corporation, so as to guarantee, within the coverage limits, the performance by the insured of any indemnity agreement set forth in this tariff. This insurance or bond may not be cancelled for any cause without thirty (30) days advance notice being first given to Jackson Purchase Electric Cooperative Corporation."

## CHANGE OF USE PROVISION:

A. When the Cooperative subsequently requires a change in its poles or

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DATE EFFECTIVE

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TITLE

General Manager

Name of Officer

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

## Form for Filing Rate Schedules

For E. are Territory Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

OriginalSHEET NO. 10.6

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

Jackson Purchase E.C.C.

Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

attachment for reasons unrelated to CATV operations, the CATV operator shall be given forty-eight (48) hours notice of the proposed change (except in case of emergency). If the CATV operator is unable or unwilling to meet the Cooperative's time schedule for such changes, the Cooperative may do the work and charge to CATV operator its reasonable cost for performing the change of CATV attachments.

ABANDONMENT:

A. If the Cooperative desires at any time to abandon any pole to which CATV operator has attachments, it shall give the CATV operator notice in writing to that effect at least thirty (30) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Cooperative shall have no attachments on such pole, but the CATV operator shall not have removed all of its attachments therefrom, such pole shall thereupon become the property of the CATV operator, and the CATV operator shall save harmless the Cooperative from all obligation, liability, damages, cost, expenses, or charges incurred thereafter; and shall pay the Cooperative for such pole an amount equal to the Cooperative's depreciated cost thereof. The Cooperative shall further evidence transfer to the CATV operator of title to the pole by means of a bill of sale.

B. The CATV operator may at any time abandon the use of the attached pole by giving due notice thereof in writing to the Cooperative and by removing therefrom any and all attachments it may have thereon. The CATV operator shall in such case pay to the Cooperative the full rental for said pole for the then current billing period.

RIGHTS OF OTHERS:

A. Upon notice from the Cooperative to the CATV operator that the use of any pole or poles is forbidden by municipal or other public authorities or by property owners, the permit governing the use of such pole or poles shall immediately terminate and the CATV operator shall remove its facilities from

DATE OF ISSUE \_\_\_\_\_

DATE EFFECTIVE \_\_\_\_\_

ISSUED BY \_\_\_\_\_

TITLE \_\_\_\_\_

General Manager

Name of Officer

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

Form for Filing Rate Schedules

For Ex. Terr. Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

OriginalSHEET NO. 10.7

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

Jackson Purchase E.C.C.  
Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

the affected pole or poles at once. No refund of any rental will be due on account of any removal resulting from such forbidden use.

PAYMENT OF TAXES:

Each party shall pay all taxes and assessments lawfully levied on its own property upon said attached poles, and the taxes and the assessments which are levied on said property shall be paid by the owner thereof, but any tax fee, or charge levied on the Cooperative's poles solely because of their use by the CATV operator shall be paid by the CATV operators.

BOND OR DEPOSITOR PERFORMANCE:

A. The CATV operators shall furnish bond or satisfactory evidence of contractual insurance coverage for the purposes hereinafter specified in the amount of Twenty-Five Thousand Dollars (\$25,000.00) until such time as the CATV operator shall occupy twenty-five hundred (2500) poles of the Cooperative and thereafter the amount thereof shall be increased to increments of One Thousand Dollars (\$1,000.00) for each one hundred (100) poles (or fraction thereof) occupied by the CATV operator, evidence of which shall be presented to the Cooperative fifteen (15) days prior to beginning construction. Such bond or insurance shall contain the provision that it shall not be terminated prior to six (6) months after receipt by the Cooperative of written notice of the desire of the Bonding or Insurance Company to terminate such bond or insurance. Upon receipt of such notice, the Cooperative shall request the CATV operator to immediately remove its cables, wires, and all other facilities from all poles of the Cooperative. If the CATV operator should fail to complete the removal of all its facilities from the poles of the Cooperative within thirty (30) days after receipt of such request from the Cooperative, then the Cooperative shall have the right to remove them at the cost and expense of the CATV operator and without being liable for any damage to the CATV operator's wires, cables, fixtures, or appurtenances. Such bond or insurance shall guarantee the payment of any sums which may become due to the Cooperative for rentals, inspections,

DATE OF ISSUE

DATE EFFECTIVE

ISSUED BY

TITLE

General Manager

Name of Officer

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

Form for Filing Rate Schedules

For, Wire Territory ServedCommunity, Town or City

P.S.C. NO. \_\_\_\_\_

Original

SHEET NO. 10.8

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

Jackson Purchase E.R.C.  
Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

or work performed for the benefit of the CATV operator under this tariff, including the removal of attachments upon termination of service by any of its provisions.

B.. After the CATV operator has been a customer of the Cooperative and not in default for a period of two years, the Cooperative shall reduce the bond by 50%, or, at the Cooperative's option, require a deposit in keeping with 807 KAR 5:006, Section 7.

USE OF ANCHORS:

The Cooperative reserves the right to prohibit the use of any existing anchors by CATV operator where the strength or conditions of said anchors cannot be readily identified by visual inspection.

DISCONTINUANCE OF SERVICE:

The Cooperative may refuse or discontinue serving an applicant or customer under the conditions set out in 807 KAR 5:006 Sect. 11(1).

EXHIBIT ADEVELOPMENT OF RENTAL CHARGES

1. Equation - Annual Charge - Two-Party Pole  
Annual Charge = [(weighted average cost 35'  
and 40' poles X .85) - \$12.50] X annual  
carrying charge factor X .1224

$$\text{Two-Party Charge} = \$85.62^{#1} \times .2163 \times .1224 = \$2.27$$

DATE OF ISSUE \_\_\_\_\_

DATE EFFECTIVE \_\_\_\_\_

ISSUED BY \_\_\_\_\_

TITLE General Manager

Name of Officer

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in



Form for Filing Rate Schedules

For Entire Territory Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

Original SHEET NO. 10.9

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

Jackson Purchase E.C.C.  
Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)	RATE PER UNIT
<p>2. Equation - Annual Charge - Three-Party Pole Annual Charge = [(weighted average cost 40' and 45' poles X .85) - \$12.50] X annual carrying charge factor X .0759</p> <p>Three-Party Charge = \$106.53<sup>#2</sup> X .2163 X .0759 = \$1.75</p> <p>3. Equation - Annual Charge - Two-User Anchor Attachment Annual Charge = Embedded cost of anchors X annual carrying charge factor X .50</p> <p>Two-Party Charge = \$28.66 X .2163 X .50 = \$3.10</p> <p>4. Equation - Annual Charge - Three-User Anchor Attachment Annual Charge = Embedded cost of anchors X annual carrying charge factor x 33 1/3</p> <p>Three-Party Charge = \$28.66 X .2163 X .3333 = \$2.07</p> <p style="text-align: center;"><u>EXHIBIT B</u></p> <p style="text-align: center;"><u>DEVELOPMENT OF ANNUAL CARRYING CHARGE</u></p> <p>Fixed Charges on Investment from PSC Annual Report (12-31-82)</p> <p>1. Operation and Maintenance Expense <span style="float: right;">\$1,378,589</span> Line No. 53, Page 14</p>	

DATE OF ISSUE \_\_\_\_\_

DATE EFFECTIVE \_\_\_\_\_

ISSUED BY \_\_\_\_\_

John P. Ferguson  
Name of Officer

TITLE \_\_\_\_\_

General Manager

Office of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

Form for Filing Rate Schedules

For Entire Territory Served  
Community, Town or City

P.S.C. NO. \_\_\_\_\_

OriginalSHEET NO. 10.10Jackson Purchase E.C.C.  
Name of Issuing Corporation

CANCELLING E.R.C. NO. \_\_\_\_\_

SHEET NO. \_\_\_\_\_

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)		RATE PER UNIT
2. Customer Accounts Expense Line No. 8, Page 15	569,871	
3. Customer Service and Informational Expense Line No. 14, Page 15	28,655	
4. Administrative and General Expenses Line No. 35, Page 15	692,098	
5. Depreciation Expense Line No. 28, Page 13	787,256	
6. Taxes Other Than Income Taxes Line No. 30, Page 13	158,554	
Sub-Total	\$3,615,023	
Divided by Line 2, Page 1	\$28,361,341-17.75%	
7. "Cost of Money"		8.88%
Rate of Return on Investment Allowed in the Last General Rate Increase, Case No. 8863 Effective 12/29/83		
Annual Carrying Charges		21.63%
Note: All line numbers and page numbers referred to above are per the 12/31/82 PSC Annual Report		
#1 Represents the actual cost of all 35' and 40' poles in plant.		
#2 Represents the actual cost of all 40' and 45' poles in plant.		

DATE OF ISSUE

DATE EFFECTIVE

ISSUED BY

TITLE

General Manager

Name of Officer

OFFICE OF THE ENERGY REGULATORY COMMISSION OF KENTUCKY in

## Form for filing Rate Schedules

For Wire Territory ServedCommunity, Town or City: P.S.C. NO. OriginalSHEET NO. 10.CANCELLING E.R.C. NO. SHEET NO. 

Jackson Purchase E.C.C.

Name of Issuing Corporation

## CLASSIFICATION OF SERVICE

CTAT (Cable Television Attachment Tariff)

RATE  
PER UNIT

#3 The cost of poles in the plant records is the bare pole cost with no appurtenances included. Therefore, the 85% calculation was omitted.

#4 Ground wires are not included as part of the pole cost in the plant records.

DATE OF ISSUE

DATE EFFECTIVE

ISSUED BY

John F. Ferguson

TITLE

General Manager

Name of Officer

Issued by authority of an Order of the ENERGY REGULATORY COMMISSION OF KENTUCKY in

AGREEMENT FOR JOINT USE OF ELECTRIC SYSTEM  
POLES FOR TELEVISION ANTENNA SERVICE ATTACHMENTS

THIS AGREEMENT, made this 1st day of October, 1987, by and between MIDKANS TELEVISION OF MARSHALL, INC. (hereinafter called the "Licensee") and JACKSON PURCHASE ELECTRIC COOPERATIVE CORPORATION, (hereinafter called the "Owner"), a corporation organized under the laws of the State of Kentucky.

WHEREAS, Licensee proposes to furnish television antenna service to residents of Marshall County, and will need to erect and maintain aerial cables, wires and associated facilities throughout the area to be served and desires to attach such cables, wires and facilities to poles of the Owner; and

WHEREAS, the Owner is willing to permit, to the extent it may lawfully do so, the attachment of said cables, wires and facilities to its poles, where in a safe manner with regard to the safety of the employees of the Owner as well as the general public and such use will not interfere with its own service requirements and with the rights or privileges of other parties using the Owner's poles.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE I

(SPECIFICATIONS)

(a) The joint use of the poles covered by this Agreement shall at all times conform to the requirements of the most current edition of the National Electrical Safety Code, and subsequent revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

(b) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse and vertical loads imposed upon them under the storm loadings of the National Electrical Safety Code assumed for the area in which they are located.

## ARTICLE II

## (ESTABLISHING JOINT USE OF POLES)

(a) Before the Licensee shall make use of any of the poles of the Owner under this Agreement, it shall request permission therefor in writing on the application form attached hereto and identified as Appendix A, and shall comply with the procedure set forth therein and in this Article II.

(b) If, in the judgment of the Owner, joint use under the circumstances is undesirable, the Owner shall have the right to reject the application. In any event, within thirty (30) days after the receipt of such application the Owner shall notify the Licensee in writing whether the application is approved or rejected.

(c) After receipt of notice from the Owner that the application has been approved, the Licensee shall furnish the Owner detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Owner to be used jointly, the number and character of the attachments to be placed on such poles, and rearrangement of the Owner's fixtures and equipment necessary for joint use, any relocations or replacements of existing poles, and any additional poles that may be required. The Owner shall, on the basis of such detailed construction plans and drawings, submit to the Licensee within thirty (30) days a cost estimate (including overhead and less salvage value of materials) for all changes that may be required in each such pole line, including an estimated completion date for such changes. Upon written notice by the Licensee to the Owner that the cost estimate is approved, the Owner shall immediately proceed with the necessary changes in the pole line covered by the cost estimate and shall diligently expedite the completion thereof within the time specified in the estimate. Nothing in the foregoing shall preclude the parties hereto from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary changes. Upon completion of all changes, the Licensee shall have the right hereunder to jointly use the poles and to make attachments in accordance with the terms of the application and of this Agreement. The Licensee shall, at its own expense, make attachments in such a manner as not to interfere with the service of the Owner, and place in a legal place and manner guys and anchors to sustain any unbalanced loads caused by its attachments.

(d) Upon completion of all changes in each pole line to be used jointly, the Licensee shall pay to the Owner the actual cost (including overhead and less salvage value of materials)

of making such changes. The obligation of the Licensee hereunder shall not be limited to amounts shown on estimates made by the Owner hereunder. An itemized statement of the actual cost of all such changes shall be submitted by the Owner to the Licensee, in form mutually agreed upon.

(e) Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of joint use hereunder shall be performed by the parties as may be mutually agreed upon, and in the event of no such mutual agreement, then as determined by Owner. Each party shall bear fifty percent (50%) of the cost of any such right-of-way reclearing and trimming.

(f) All poles jointly used under this Agreement shall remain the property of the Owner and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to the Ownership of any of said poles.

(g) The Owner reserves the right to exclude any of its facilities from joint use.

### ARTICLE III

#### (EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS)

The Owner does not warrant or assure to the Licensee any right-of-way privileges or easements, and if the Licensee shall at any time be prevented from placing or maintaining its attachments on the Owner's poles, no liability on account thereof shall attach to the Owner. Each party shall be responsible for obtaining its own easements and rights-of-way.

### ARTICLE IV

#### (MAINTENANCE OF POLES, ATTACHMENTS AND RIGHT-OF-WAY)

(a) The Owner shall, at its own expense, maintain the jointly used poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article I hereof and shall replace, reinforce or repair such of these poles as become defective.

(b) Whenever right-of-way considerations or public regulations make relocation of a pole or poles necessary, such relocations shall be made by the Owner at its own expense, except that each party shall bear the cost of transferring its own attachments.

(c) Whenever it is necessary to replace or relocate a jointly used pole, the Owner shall, before making such replacement or relocation, give twenty (20) days' notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacements or relocation, and the Licensee shall, at the time so specified, transfer its attachments to the new or relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Owner may elect to do such work, and the Licensee shall pay the Owner the cost thereof. In the event the Licensee fails to transfer its attachments and the Owner does such work, the Owner shall not be liable for any loss or damage to the Licensee's facilities which may result therefrom.

(d) Except as otherwise provided in Section (e) of this Article, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Article I hereof and shall keep them in safe condition and in thorough repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be performed by the parties as may be mutually agreed upon and the cost thereof shall be borne by the parties as provided in Article II (e) hereof.

(e) Any existing joint use construction of the parties which does not conform to the specifications mentioned in Article I hereof shall be brought into conformity therewith as soon as practicable.

When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in Sections (b) and (d) of this Article.

## ARTICLE V

### (INSURANCE)

The Licensee shall take out and maintain throughout the period during which this Agreement shall remain in effect the following minimum insurance:

1. Workmen's Compensation insurance covering all employees of the Licensee who shall perform any of the obligations of the Licensee hereunder, with minimum coverage of \$100,000 employer's liability.

2. Public liability and property damage liability insurance covering all operations under this Agreement for bodily injury or death not less than \$500,000 for one person and \$500,000 for each accident; for property damage, not less than \$100,000 for each accident and \$500,000 aggregate for accidents during the policy period.
3. Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement whether owned, non-owned, or hired; public liability limits of not less than \$250,000 for one person and \$500,000 for each accident; property damage limit of \$100,000 for each accident.
4. Excess liability coverage umbrella form of not less than \$1,000,000.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Licensee shall furnish to the Owner, with its first application for joint use hereunder, a certificate evidencing compliance with the foregoing requirements. Furthermore, the insurance carrier shall notify Owner of any anticipated cancellation for reason of non-payment or other reason and Owner has the right at its option to make such payment for said insurance or otherwise procure insurance as herein required on behalf of Licensee and charge the Licensee for said cost immediately or including such cost as additional charges herein called for.

#### ARTICLE VI

##### (RECOVERY OF SPACE BY OWNER)

(a) If the Owner shall at any time require the space occupied by the Licensee's attachments on the Owner's poles, the Licensee shall remove its attachments within thirty (30) days after receipt of written notice from the Owner of the Owner's need for such space. Upon the failure of the Licensee to remove its attachments within such period, the Owner may remove such attachments and the Licensee shall pay the Owner the cost thereof.

(b) In the event the Licensee, upon receipt of a notice from the Owner given under Section (a) of this Article, shall desire that the Owner replace any existing poles in order to provide space for the Licensee's attachments, the Licensee shall submit its request to the Owner therefor in accordance with the provisions of Article II hereof.



## ARTICLE VII

## (ABANDONMENT OF JOINTLY USED POLES)

(a) If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least sixty (60) days prior to the date on which it intends to abandon such pole. If, at the expiration of said period, the Owner shall have no attachments on such pole but the Licensee shall not have removed all of the attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the Owner from all obligation, liability, damages, cost, expenses or charges incurred thereafter; and shall pay the Owner for such pole an amount equal to the Owner's depreciated cost thereof. The Owner shall further evidence transfer to the Licensee of title to the pole by means of a bill of sale.

(b) The Licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the Owner and by removing therefrom any and all attachments it may have thereon. The Licensee shall in such case pay to the Owner the full rental for said pole for the then current year.

## ARTICLE VIII

## (RENTALS)

(a) On or about December 31st of each year the parties, acting in cooperation, shall tabulate the total number of poles in joint use as of the preceding day and the number of poles on which the Licensee removed all of its attachments during the twelve (12) preceding months, which tabulation shall indicate the number of poles on which rentals are to be paid.

(b) The rental per pole due from the Licensee to the Owner shall be \$ 3.00 per annum which shall be paid by the Licensee to the Owner for each jointly used pole as shown by the annual tabulation of joint poles provided for herein.

## ARTICLE IX

## (RIGHTS OF OTHER PARTIES)

(a) If the Owner, prior to the execution of this Agreement, has conferred, or hereafter confers, upon others, not parties to this Agreement, by contract or otherwise, rights

or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting such rights or privileges, and the Owner shall have the right, by contract or otherwise, to continue or extend such existing rights or privileges. Prior to making any attachments to any pole or poles of the Owner hereunder, the Licensee shall notify any such other parties in writing of the Licensee's proposed use of such pole or poles, and any attachment privileges granted to the Licensee hereunder shall be subject to any rights or privileges which shall have been theretofore conferred by the Owner upon any such other parties.

(b) Where municipal regulations require the Owner to allow the use of its poles for fire alarm, police or other like signal systems, such use shall be permitted under the terms of this Article.

#### ARTICLE X

##### (ASSIGNMENT OF RIGHTS)

The Licensee shall not assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, without the written consent of the Owner.

#### ARTICLE XI

##### (INDEMNIFY AND HOLD HARMLESS)

Licensee and its agents, successors, and assigns, hereby agree to indemnify and hold harmless the Owner from any and all claims or liability for personal injuries or property damage, including attorney fees and costs incurred by the Owner in defending such claim, arising because of any negligence or misconduct on the part of Licensee or any of its agents, successors, or assigns in connection with Licensee's installation, maintenance, removal and other use of Owner's equipment and facilities.

#### ARTICLE XII

##### (WAIVER OF TERMS OR CONDITIONS)

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment

of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

#### ARTICLE XIII

##### (PAYMENT OF TAXES)

Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and assessments which are levied on said joint poles shall be paid by the Owner thereof, but any tax, fee, or charge levied on the Owner's poles solely because of their use by the Licensee shall be paid by the Licensee.

#### ARTICLE XIV

##### (INTEREST AND PAYMENTS)

All amounts to be paid by the Licensee to the Owner under this Agreement shall be due and payable within thirty (30) days after an itemized statement shall have been presented to the Licensee. Any payment not made within thirty (30) days from the due date shall thereafter bear interest at the rate of six percent (6%) per annum until paid.

#### ARTICLE XV

##### (SERVICE OF NOTICES)

Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Owner at its office at 2900 Irvin Cobb Drive, P. O. Box 3188, Paducah, Kentucky 42001, or to the Licensee at its office at Chamber of Commerce Building, Route 7  
Benton, KY 42025

as the case may be, or to such other address as either party may from time to time designate in writing for that purpose.

#### ARTICLE XVI

##### (TERM OF AGREEMENT)

This Agreement shall remain in effect until terminated by either party hereto at the end of one (1) year from the date hereof or thereafter upon the giving of written notice to the other party not less than six (6) months prior to the date of termination.

## ARTICLE XVII

## (EXISTING CONTRACTS)

All existing agreements (if any) between the parties hereto for joint use of poles are by mutual consent hereby abrogated and superseded by this Agreement.

Nothing in the foregoing shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.

## ARTICLE XVIII

## (APPROVAL OF ADMINISTRATOR)

This Agreement, and any amendment thereof, shall be effective subject to the condition that, during any period in which the Owner is a borrower from the Rural Electrification Administration, this Agreement and any amendment thereof shall have the approval in writing of the Administrator of the Rural Electrification Administration.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

By: \_\_\_\_\_

President

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer

BRIEFGRASS CABLEVISION OF BENTON, KY

By: \_\_\_\_\_

President

ATTEST:

\_\_\_\_\_  
Name and Title

## APPENDIX A

TO: Jackson Purchase Electric  
Cooperative Corporation  
2900 Irvin Cobb Drive  
P. O. Box 3188  
Paducah, KY 42001

DATE: \_\_\_\_\_

REQUEST NO. \_\_\_\_\_

This is to request permission for this Company to use jointly certain of your poles under the terms and conditions of our Agreement for Joint Use of Utility Poles, dated \_\_\_\_\_

The poles, including the number and character of facilities to be placed thereon, for which this permission is requested, are those included in the pole lines indicated on the attached map, which also bears the above date and request number.

Our present plan is to start this work about \_\_\_\_\_, 19\_\_\_\_, and complete the work about \_\_\_\_\_, 19\_\_\_\_.

If permission to use these poles is given by you, this Company will prepare and furnish to you, after engineering is completed, detailed construction plans and drawings, together with necessary maps, to indicate specifically your poles that we wish to use jointly, the number and character of the facilities to be placed on such poles, and any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Article II of the Agreement.

This Company has obtained all authorizations, permits and approvals from all Municipal, State and Federal authorities to the extent required by law for the Licensee's proposed service and all easements, licenses, rights-of-way and permits necessary for the proposed use of these poles.

If the joint use proposed is agreeable, please signify your approval of this request in the space provided and return the second copy to us.

BUFFERSASS CABLEVISION OF MARSHALL, Inc.  
Name of Applicant  
Chamber of Commerce Building  
Kane 7, Benton, KY 42025

\_\_\_\_\_  
Address

William DeBattaglia  
Signature of Applicant's  
Representative

President  
Title

TO: BELICROSS CABLEVISION OF MARSHALL, INC. DATE: \_\_\_\_\_  
Name of Applicant

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This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of this Agreement referred to above, and under the conditions outlined in your request.

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

By: \_\_\_\_\_  
(Title)

## CONSENT TO ASSIGNMENT

The undersigned hereby consents to the assignment to U.S. Cable Television Group, L.P., a Delaware limited partnership ("Buyer"), by C4 Media Cable Mid-South Limited Partnership, a Delaware limited partnership ("Seller"), of all of Seller's right, title and interest in, and duties and obligations under, that certain Agreement, dated May 15, 1984 (the "Agreement") for Marshall County, Kentucky. The undersigned further confirms that: (i) the Agreement is validly existing and in full force and effect; and (ii) there exists no fact or circumstance which constitutes or which, with the passage of time or the giving of notice or both, would constitute a default under the Agreement or permit the undersigned to cancel or terminate the rights thereunder, except upon the expiration of the full term thereof.

The undersigned expressly agrees that this Consent to Assignment shall be effective as of the close of business on the date upon which Buyer acquires the assets of Seller.

Dated this 19<sup>th</sup> day of January, 1987.

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

By: 

Manager of Engineering

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by  
Federal Express, postage prepaid, this 14th day of February, 2003, upon:

Frank N. King, Jr.  
Dorsey, King, Gray & Norment  
318 Second Street  
Henderson, KY 42420  
(counsel for JPEC)



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Counsel for KCIA